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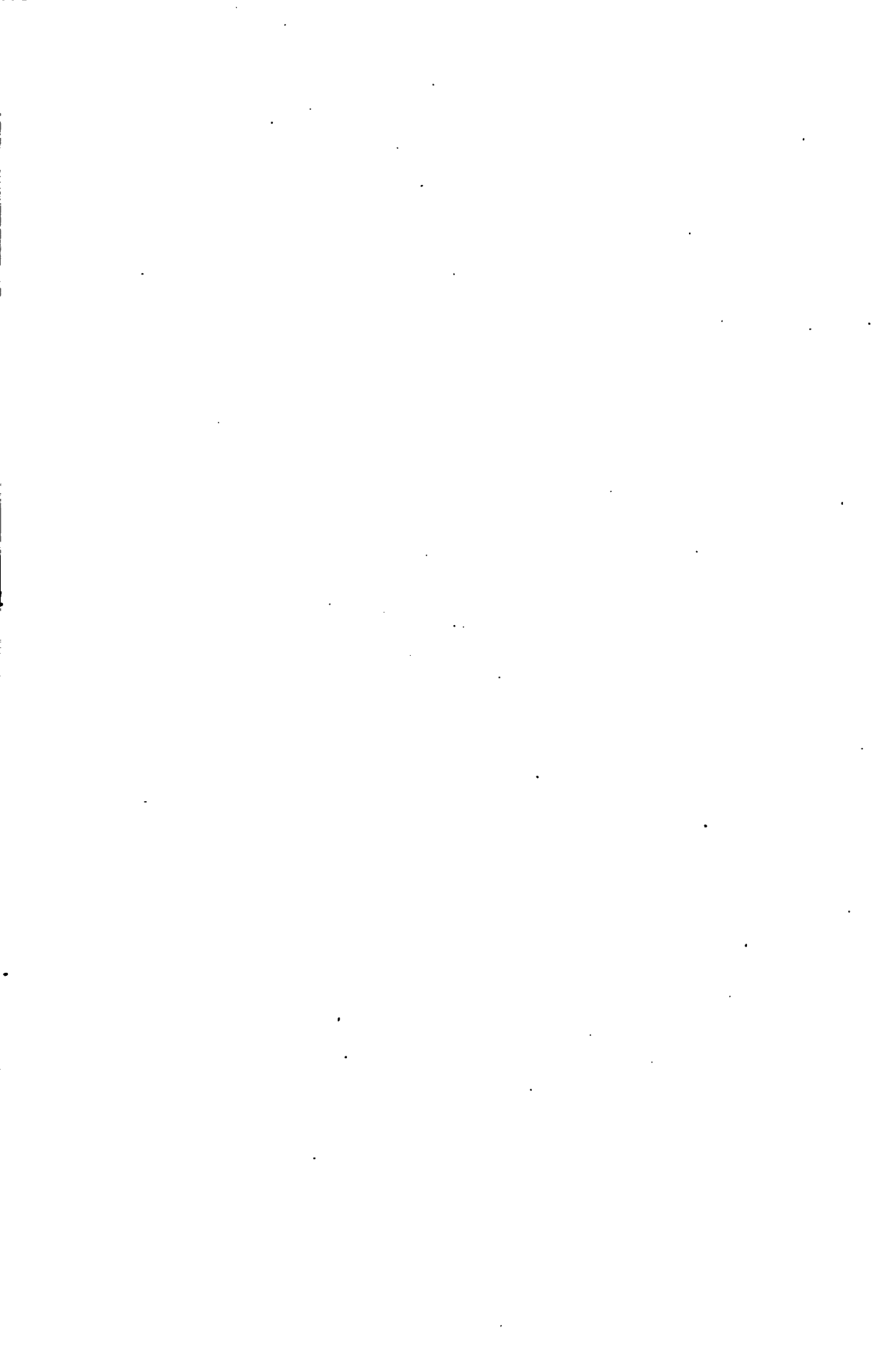
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cf

SECOND EDITION

SUPPLEMENT, 1918

Containing all the Laws of a Permanent and General
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Congress between January 1, 1916, and July 18, 1918

WITH

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EDWARD THOMPSON COMPANY
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BY

A. B. LYON COMPANY, ALBANY, N. Y.

PREFACE

The statutes collected in this Supplement connect, without break or duplication, with those contained in the main work. They are the general, permanent, and public acts passed by Congress between Jan. 1, 1916, and July 18, 1918. These acts are classified according to the scheme of titles in the main work, and in using this Supplement the reader should examine the corresponding title to locate the late, amendatory, or repealing legislation upon the topic under consideration. Tables of titles, Revised Statutes sections, and statutes chronologically arranged are included.

Part of the volume is devoted to the supplemental notes. These connect with the notes in the Second Edition and annotate the acts found therein. The aim has been to present all the decisions construing any federal statute which have appeared since the editorial work on this edition was completed. The arrangement is by title, volume, page, and section as the statutes are found in preceding volumes, and the investigator has merely to turn to the corresponding title, volume, page and section as shown by the captions in this Supplement to find the late cases. The omission of a title or of page and section captions implies that no new cases have been found.

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I. SEEDS, PLANTS AND NURSERY STOCK

[Seeds and grain — adulteration — prohibition of importation — unfit for seeding.] * * * For studying and testing commercial seeds, including the testing of samples of seeds of grasses, clover, or alfalfa, and lawn-grass seeds secured in the open market, and where such samples are found to be adulterated or misbranded the results of the tests shall be published, together with the names of the persons by whom the seeds were offered for sale, and for carrying out the provisions of the Act approved August twenty-fourth, nineteen hundred and twelve, entitled "An Act to regulate foreign commerce by prohibiting the admission into the United States of certain adulterated grain and seeds unfit for seeding purposes" (Thirty-seventh Statutes at Large, page five hundred and six), \$31,700:

and, hereafter, the provisions of said Act approved August twenty-fourth, nineteen hundred and twelve, shall be applied to seed of vetch and ryegrass; and, hereafter, when any kind or variety or mixture of the seeds subject to the provisions of said Act of August twenty-fourth, nineteen hundred and twelve, as hereby amended, shall contain less than sixty-five per centum of live pure seed as distinguished from dead seed, chaff, dirt, other seeds, or foreign matter, such seeds or mixtures thereof shall be deemed unfit for seeding purposes within the meaning of said Act approved August twenty-fourth, nineteen hundred and twelve, and the importation of such seed or mixture thereof is prohibited: *Provided, however,* That seed of Kentucky blue grass and seed of Canada blue grass shall not be considered unfit for seeding purposes when they contain fifty per centum or more of live pure seed. [39 Stat. L. 453.]

The foregoing and the following paragraph are from the Agricultural Appropriation Act of August 11, 1916, ch. 313.

For the Act of August 24, 1912, ch. 382, mentioned in this paragraph, see 1914 Supp. Fed. Stat. Ann. 10; 1 Fed. Stat. Ann. (2d ed.) 229.

[Seeds, etc.—purchase and distribution—allotment to Congressmen.]

* * * For purchase, propagation, testing, and congressional distribution of valuable seeds, bulbs, trees, shrubs, vines, cuttings, and plants; all necessary office fixtures and supplies, fuel, transportation, paper, twine, gum, postal cards, gas; electric current, rent outside of the District of Columbia, official traveling expenses, and all necessary material and repairs for putting up and distributing the same; for repairs and the employment of local and special agents, clerks, assistants, and other labor required, in the city of Washington and elsewhere, \$252,540. And the Secretary of Agriculture is hereby directed to expend the said sum, as nearly as practicable, in the purchase, testing, and distribution of such valuable seeds, bulbs, shrubs, vines, cuttings, and plants, the best he can obtain at public or private sale, and such as shall be suitable for the respective localities to which the same are to be apportioned, and in which same are to be distributed as hereinafter stated, and such seeds so purchased shall include a variety of vegetable and flower seeds suitable for planting and culture in the various sections of the United States: *Provided,* That the Secretary of Agriculture, after due advertisement and on competitive bids, is authorized to award the contract for the supplying of printed packets and envelopes and the packeting, assembling, and mailing of the seeds, bulbs, shrubs, vines, cuttings, and plants, or any part thereof, for a period of not more than five years nor less than one year, if by such action he can best protect the interests of the United States. An equal proportion of five-sixths of all seeds, bulbs, shrubs, vines, cuttings, and plants, shall, upon their request, after due notification by the Secretary of Agriculture that the allotment to their respective districts is ready for distribution, be supplied to Senators, Representatives, and Delegates in Congress for distribution among their constituents, or mailed by the department upon the receipt of their addressed franks, in packages of such weight as the Secretary of Agriculture and the Postmaster General may jointly determine: *Provided, however,* That upon each envelope or wrapper containing packages of seeds the contents thereof shall be plainly indicated, and the Secretary shall not distribute to any Senator, Representative, or Delegate seeds entirely unfit for the climate and locality he represents, but shall distribute the same so that each Member

may have seeds of equal value, as near as may be, and the best adapted to the locality he represents: *Provided, also*, That the seeds allotted to Senators and Representatives for distribution in the districts embraced within the twenty-fifth and thirty-fourth parallels of latitude shall be ready for delivery not later than the tenth day of January: *Provided, also*, That any portion of the allotments to Senators, Representatives, and Delegates in Congress remaining uncalled for on the first day of April shall be distributed by the Secretary of Agriculture, giving preference to those persons whose names and addresses have been furnished by Senators and Representatives in Congress and who have not before during the same season been supplied by the Department: *And provided, also*, That the Secretary shall report, as provided in this Act, the place, quantity, and price of seeds purchased, and the date of purchase; but nothing in this paragraph shall be construed to prevent the Secretary of Agriculture from sending seeds to those who apply for the same. And the amount herein appropriated shall not be diverted or used for any other purpose but for the purchase, testing, propagation, and distribution of valuable seeds, bulbs, mulberry and other rare and valuable trees, shrubs, vines, cuttings, and plants. [39 Stat. L. 455.]

See the note to the preceding paragraph of the text.

[Distribution of seeds, etc.] * * * That the Secretary of Agriculture, after due advertisement and on competitive bids, is authorized to award the contract for the supplying of printed packets and envelopes and the packeting, assembling, and mailing of the seeds, bulbs, shrubs, vines, cuttings, and plants, or any part thereof, for a period of not more than five years nor less than one year, if by such action he can best protect the interests of the United States. An equal proportion of five-sixths of all seeds, bulbs, shrubs, vines, cuttings, and plants, shall, upon their request, after due notification by the Secretary of Agriculture that the allotment to their respective districts is ready for distribution, be supplied to Senators, Representatives, and Delegates in Congress for distribution among their constituents, or mailed by the department upon the receipt of their addressed franks, in packages of such weight as the Secretary of Agriculture and the Postmaster General may jointly determine: *Provided, however*, That upon each envelope or wrapper containing packages of seeds the contents thereof shall be plainly indicated, and the Secretary shall not distribute to any Senator, Representative, or Delegate seeds entirely unfit for the climate and locality he represents, but shall distribute the same so that each Member may have seeds of equal value, as near as may be, and the best adapted to the locality he represents: *Provided, also*, That the seeds allotted to Senators and Representatives for distribution in the districts embraced within the twenty-fifth and thirty-fourth parallels of latitude shall be ready for delivery not later than the tenth day of January: *Provided, also*, That any portion of the allotments to Senators, Representatives, and Delegates in Congress remaining uncalled for on the first day of April shall be distributed by the Secretary of Agriculture, giving preference to those persons whose names and addresses have been furnished by Senators and Representatives in Congress and who have not before during the same season been supplied by the department: *And provided, also*, That the Secretary shall

report, as provided in this Act, the place, quantity, and price of seeds purchased, and the date of purchase; but nothing in this paragraph shall be construed to prevent the Secretary of Agriculture from sending seeds to those who apply for the same. And the amount herein appropriated shall not be diverted or used for any other purpose but for the purchase, testing, propagation, and distribution of valuable seeds, bulbs, mulberry and other rare and valuable trees, shrubs, vines, cuttings, and plants. [39 Stat. L. 1144.]

The foregoing and the following paragraph of the text are from the Agricultural Appropriation Act of March 4, 1917, ch. 179.

Provisions similar to those of this paragraph have appeared in the Agricultural Appropriation Acts for many years, and seem to relate to the particular year only.

[Interstate quarantine against plant disease or insect infestation — importation or transportation prohibited — hearings — former Act amended.] * * * That section eight of an Act entitled "An Act to regulate the importation of nursery stock and other plants and plant products; to enable the Secretary of Agriculture to establish and maintain quarantine districts for plant diseases and insect pests; to permit and regulate the movement of fruits, plants, and vegetables therefrom, and for other purposes," approved August twentieth, nineteen hundred and twelve, be, and the same is hereby, amended so as to read as follows:

"Sec. 8. That the Secretary of Agriculture is authorized and directed to quarantine any State, Territory, or District of the United States, or any portion thereof, when he shall determine that such quarantine is necessary to prevent the spread of a dangerous plant disease or insect infestation, new to or not theretofore widely prevalent or distributed within and throughout the United States; and the Secretary of Agriculture is directed to give notice of the establishment of such quarantine to common carriers doing business in or through such quarantined area, and shall publish in such newspapers in the quarantine area as he shall select notice of the establishment of quarantine. That no person shall ship or offer for shipment to any common carrier, nor shall any common carrier receive for transportation or transport, nor shall any person carry or transport from any quarantined State or Territory or District of the United States, or from any quarantined portion thereof, into or through any other State or Territory, or District, any class of nursery stock or any other class of plants, fruits, vegetables, roots, bulbs, seeds, or other plant products, or any class of stone or quarry products, or any other article of any character whatsoever, capable of carrying any dangerous plant disease or insect infestation, specified in the notice of quarantine except as hereinafter provided. That it shall be unlawful to move, or allow to be moved, any class of nursery stock or any other class of plants, fruits, vegetables, roots, bulbs, seeds, or other plant products, or any class of stone or quarry products or any other article of any character whatsoever, capable of carrying any dangerous plant disease or insect infestation, specified in the notice of quarantine hereinbefore provided, and regardless of the use for which the same is intended, from any quarantined State or Territory or District of the United States or quarantined portion thereof, into or through any other State or Territory or District, in manner or method or under conditions other than those prescribed by the Secretary of Agriculture. That it shall be the duty

of the Secretary of Agriculture, when the public interests will permit, to make and promulgate rules and regulations which shall permit and govern the inspection, disinfection, certification, and method and manner of delivery and shipment of the class of nursery stock or of any other class of plants, fruits, vegetables, roots, bulbs, seeds, or other plant products, or any class of stone or quarry products, or any other article of any character whatsoever, capable of carrying any dangerous plant disease or insect infestation, specified in the notice of quarantine hereinbefore provided, and regardless of the use for which the same is intended, from a quarantined State or Territory or District of the United States, or quarantined portion thereof, into or through any other State or Territory or District; and the Secretary of Agriculture shall give notice of such rules and regulations as hereinbefore provided in this section for the notice of the establishment of quarantine: *Provided*, That before the Secretary of Agriculture shall promulgate his determination that it is necessary to quarantine any State, Territory, or District of the United States, or portion thereof, under the authority given in this section, he shall, after due notice to interested parties, give a public hearing under such rules and regulations as he shall prescribe, at which hearing any interested party may appear and be heard, either in person or by attorney." [39 Stat. L. 1165.]

See the note to the preceding paragraph of the text.

For the Act of Aug. 20, 1912, ch. 308, § 8, amended by this paragraph, see 1914 Supp. Fed. Stat. Ann. 8; 1 Fed. Stat. Ann. (2d ed.) 234.

II. STANDARD MEASURES AND GRADES

[SEC. 1.] [United States grain standards Act — definition — construction.] That this Part, to be known as the United States grain standards Act, be and is hereby enacted, to read and be effective hereafter as follows:

That this Act shall be known by the short title of the "United States grain standards Act." The word "person," wherever used in this Act, shall be construed to import the plural or singular, as the case demands, and shall include individuals, associations, partnerships, and corporations; the words "in interstate or foreign commerce," wherever used in this Act, mean, "from any State, Territory, or District to or through any other State, Territory, or District, or to or through any foreign country, or within any Territory or District." When construing and enforcing the provisions of this Act, the act, omission, or failure of any official, agent, or other person acting for or employed by any association, partnership, or corporation within the scope of his employment or office shall, in every case, also be deemed the act, omission, or failure of such association, partnership, or corporation as well as that of the person. [39 Stat. L. 482.]

The foregoing section 1 and the following sections 2-12, constitute "Part B" of the Agricultural Appropriation Act of Aug. 11, 1916, ch. 313.

SEC. 2. [Establishment of standards of quality and condition.] That the Secretary of Agriculture is hereby authorized to investigate the handling, grading, and transportation of grain and to fix and establish as soon

as may be after the enactment hereof standards of quality and condition for corn (maize), wheat, rye, oats, barley, flaxseed, and such other grains as in his judgment the usages of the trade may warrant and permit, and the Secretary of Agriculture shall have power to alter or modify such standards whenever the necessities of the trade may require. In promulgating the standards, or any alteration or modification of such standards, the Secretary shall specify the date or dates when the same shall become effective, and shall give public notice, not less than ninety days in advance of such date or dates, by such means as he deems proper. [39 Stat. L. 482.]

See the notes to the preceding section 1 of this Act.

SEC. 3. [Official grain standards.] That the standards so fixed and established shall be known as the official grain standards of the United States. [39 Stat. L. 483.]

See the notes to section 1 of this Act, *supra*, p. 7.

SEC. 4. [Official inspection of grain — grades.] That whenever standards shall have been fixed and established under this Act for any grain no person thereafter shall ship or deliver for shipment in interstate or foreign commerce any such grain which is sold, offered for sale, or consigned for sale by grade unless the grain shall have been inspected and graded by an inspector licensed under this Act and the grade by which it is sold, offered for sale, or consigned for sale be one of the grades fixed therefor in the official grain standards of the United States: *Provided*, That any person may sell, offer for sale, or consign for sale, ship or deliver for shipment in interstate or foreign commerce any such grain by sample or by type, or under any name, description, or designation which is not false or misleading, and which name, description, or designation does not include in whole or in part the terms of any official grain standard of the United States: *Provided further*, That any such grain sold, offered for sale, or consigned for sale by grade may be shipped or delivered for shipment in interstate or foreign commerce without inspection at point of shipment by an inspector licensed under this Act, to or through any place at which an inspector licensed under this Act is located, subject to be inspected by a licensed inspector at the place to which shipped or at some convenient point through which shipped for inspection, which inspection shall be under such rules and regulations as the Secretary of Agriculture shall prescribe, and subject further to the right of appeal from such inspection, as provided in section six of this Act: *And provided further*, That any such grain sold, offered for sale, or consigned for sale by any of the grades fixed therefor in the official grain standards may, upon compliance with the rules and regulations prescribed by the Secretary of Agriculture, be shipped in interstate or foreign commerce without inspection from a place at which there is no inspector licensed under this Act to a place at which there is no such inspector, subject to the right of either party to the transaction to refer any dispute as to the grade of the grain to the Secretary of Agriculture, who may determine the true grade thereof. No person shall in any certificate or in any contract or agreement of sale or agreement to sell by grade, either oral or written, involving, or in any invoice or bill of lading or other

shipping document relating to, the shipment or delivery for shipment, in interstate or foreign commerce, of any grain for which standards shall have been fixed and established under this Act, describe, or in any way refer to, any of such grain as being of any grade other than a grade fixed therefor in the official grain standards of the United States. [39 Stat. L. 483.]

See the notes to section 1 of this Act, *supra*, p. 7.

SEC. 5. [Misrepresentation respecting grade of grain.] That no person, except as permitted in section four, shall represent that any grain shipped or delivered for shipment in interstate or foreign commerce is of a grade fixed in the official grain standards other than as shown by a certificate therefor issued in compliance with this Act; and the Secretary of Agriculture is authorized to cause examinations to be made of any grain for which standards shall have been fixed and established under this Act, and which has been certified to conform to any grade fixed therefor in such official grain standards, or which has been shipped or delivered for shipment in interstate or foreign commerce. Whenever, after opportunity for hearing is given to the owner or shipper of the grain involved, and to the inspector thereof if the same has been inspected, it is determined by the Secretary that any quantity of grain has been incorrectly certified to conform to a specified grade, or has been sold, offered for sale, or consigned for sale under any name, description, or designation which is false or misleading, he may publish his findings. [39 Stat. L. 483.]

See the notes to section 1 of this Act, *supra*, p. 7.

SEC. 6. [Appeal from official inspection and grading—findings as evidence.] That whenever standards shall have been fixed and established under this Act for any grain and any quantity of such grain sold, offered for sale, or consigned for sale, or which has been shipped, or delivered for shipment in interstate or foreign commerce shall have been inspected and a dispute arises as to whether the grade as determined by such inspection of any such grain in fact conforms to the standard of the specified grade, any interested party may, either with or without reinspection, appeal the question to the Secretary of Agriculture, and the Secretary of Agriculture is authorized to cause such investigation to be made and such tests to be applied as he may deem necessary and to determine the true grade: *Provided*, That any appeal from such inspection and grading to the Secretary of Agriculture shall be taken before the grain leaves the place where the inspection appealed from was made and before the identity of the grain has been lost, under such rules and regulations as the Secretary of Agriculture shall prescribe. Whenever an appeal shall be taken or a dispute referred to the Secretary of Agriculture under this Act, he shall charge and assess, and cause to be collected, a reasonable fee, in amount to be fixed by him, which fee, in case of an appeal, shall be refunded if the appeal is sustained. All such fees, not so refunded, shall be deposited and covered into the Treasury as miscellaneous receipts. The findings of the Secretary of Agriculture as to grade, signed by him or by such officer or officers, agent or agents, of the Department of Agriculture as he may designate, made after the parties in interest have had opportunity to be heard, shall be accepted

in the courts of the United States as prima facie evidence of the true grade of the grain determined by him at the time and place specified in the findings. [39 Stat. L. 484.]

See the notes to section 1 of this Act, *supra*, p. 7.

SEC. 7. [Licenses to inspect — reports.] The Secretary of Agriculture may issue a license to any person, upon presentation to him of satisfactory evidence that such person is competent, to inspect and grade grain and to certificate the grade thereof for shipment or delivery for shipment in interstate or foreign commerce, under this Act and the rules and regulations prescribed thereunder. No person authorized or employed by any State, county, city, town, board of trade, chamber of commerce, corporation, society, partnership, or association to inspect or grade grain shall certify, or otherwise state or indicate in writing, that any grain for shipment or delivery for shipment in interstate or foreign commerce, which has been inspected or graded by him, or by any person acting under his authority, is of one of the grades of the official grain standards of the United States, unless he holds an unsuspended and unrevoked license issued by the Secretary of Agriculture: *Provided*, That in any State which has, or which may hereafter have a State grain inspection department established by the laws of such State, the Secretary of Agriculture shall issue licenses to the persons duly authorized and employed to inspect and grade grain under the laws of such State. The Secretary of Agriculture may suspend or revoke any license issued by him under this Act whenever, after opportunity for hearing has been given to the licensee, the Secretary shall determine that such licensee is incompetent or has knowingly or carelessly graded grain improperly or by any other standard than is authorized under this Act, or has issued any false certificate of grade, or has accepted any money or other consideration, directly or indirectly, for any neglect or improper performance of duty, or has violated any provision of this Act or of the rules and regulations made hereunder. Pending investigation the Secretary of Agriculture, whenever he deems necessary, may suspend a license temporarily without hearing: *Provided further*, That no person licensed by the Secretary of Agriculture to inspect or grade grain or employed by him in carrying out any of the provisions of this Act shall, during the term of such license or employment, be interested, financially or otherwise, directly or indirectly, in any grain elevator or warehouse, or in the merchandising of grain, nor shall he be in the employment of any person or corporation owning or operating any grain elevator or warehouse.

The Secretary of Agriculture shall require every inspector licensed under this Act to keep complete and correct records of all grain graded and inspected by him, and to make reports to the Secretary of Agriculture, in such forms and at such times as he may require, showing the place of inspection, the date of inspection, the name of the elevator or warehouse, if any, to which the grain was delivered or from which it was shipped, the kind of grain, the quantity of each kind, the grade thereof, and such other information as the Secretary of Agriculture may deem necessary. The Secretary of Agriculture, on each first Tuesday in January and each first Tuesday in July of each year shall make publication of a summary of such facts as are ascertained, showing in as great detail as possible all the facts, including

a summary as to the amount and grade of grain delivered to the elevator or warehouse and the amount and grade of grain delivered from such elevator or warehouse, and the estimated amount received on sample or type by such elevator or warehouse, and the estimated amount delivered therefrom on sample or type. [39 Stat. L. 484.]

See the notes to section 1 of this Act, *supra*, p. 7.

SEC. 8. [Rules and regulations.] That the Secretary of Agriculture shall from time to time, make such rules and regulations as he may deem necessary for the efficient execution of the provisions of this Act. [39 Stat. L. 485.]

See the notes to section 1 of this Act, *supra*, p. 7.

SEC. 9. [Violations of Act — penalty.] That any person who shall knowingly violate any of the provisions of sections four or seven of this Act, or any inspector licensed under this Act who shall knowingly inspect or grade improperly any grain which has been shipped or delivered for shipment in interstate or foreign commerce, or shall knowingly give any false certificate of grade, or shall accept money or other consideration, directly or indirectly, for any neglect or improper performance of duty, and any person who shall improperly influence or attempt to improperly influence any such inspector in the performance of his duty, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not more than \$1,000, or be imprisoned not more than one year, or both. [39 Stat. L. 485.]

See the notes to section 1 of this Act, *supra*, p. 7.

SEC. 10. [Interference with execution of official duties — penalty.] That every person who forcibly assaults, resists, impedes, or interferes with any officer or employee of the United States Department of Agriculture in the execution of any duties authorized to be performed by this Act or the rules and regulations made hereunder shall, upon conviction thereof, be fined not more than \$1,000, or be imprisoned not more than one year, or both. [39 Stat. L. 485.]

See the notes to section 1 of this Act, *supra*, p. 7.

SEC. 11. [Effect of invalidity of part of Act.] That if any clause, sentence, paragraph, or part of this Act shall, for any reason, be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, or part thereof, directly involved in the controversy in which such judgment shall have been rendered. [39 Stat. L. 485.]

See the notes to section 1 of this Act, *supra*, p. 7.

SEC. 12. [Appropriation.] That there is hereby appropriated, out of any money in the Treasury not otherwise appropriated, the sum of \$250,000, which shall be available until expended, for the expenses of carrying into effect the provisions of this Act, including such rent and the employment

of such persons and means as the Secretary of Agriculture may deem necessary in the city of Washington and elsewhere. [39 Stat. L. 485.]

See the notes to section 1 of this Act, *supra*, p. 7.

An Act To fix standards for Climax baskets for grapes and other fruits and vegetables, and to fix standards for baskets and other containers for small fruits, berries, and vegetables, and for other purposes.

[Act of Aug. 31, 1916, ch. 426, 39 Stat. L. 673.]

[SEC. 1.] **[Standards for Climax baskets for fruits and vegetables.]** That standards for Climax baskets for grapes and other fruits and vegetables shall be the two-quart basket, four-quart basket, and twelve-quart basket, respectively:

(a) The standard two-quart Climax basket shall be of the following dimensions: Length of bottom piece, nine and one-half inches; width of bottom piece, three and one-half inches; thickness of bottom piece, three-eighths of an inch; height of basket, three and seven-eighths inches, outside measurement; top of basket, length eleven inches and width five inches, outside measurement. Basket to have a cover five by eleven inches, when a cover is used.

(b) The standard four-quart Climax basket shall be of the following dimensions: Length of bottom piece, twelve inches; width of bottom piece, four and one-half inches; thickness of bottom piece, three-eighths of an inch; height of basket, four and eleven-sixteenths inches, outside measurement; top of basket, length fourteen inches, width six and one-fourth inches, outside measurement. Basket to have cover six and one-fourth inches by fourteen inches, when cover is used.

(c) The standard twelve-quart Climax basket shall be of the following dimensions: Length of bottom piece, sixteen inches; width of bottom piece, six and one-half inches; thickness of bottom piece, seven-sixteenths of an inch; height of basket, seven and one-sixteenth inches, outside measurement; top of basket, length nineteen inches, width nine inches, outside measurement. Basket to have cover nine inches by nineteen inches, when cover is used. [39 Stat. L. 673.]

SEC. 2. **[Standard basket, etc., for small fruit, etc.]** That the standard basket or other container for small fruits, berries, and vegetables shall be of the following capacities, namely, dry one-half pint, dry pint, dry quart, or multiples of the dry quart.

(a) The dry half pint shall contain sixteen and eight-tenths cubic inches.

(b) The dry pint shall contain thirty-three and six-tenths cubic inches.

(c) The dry quart shall contain sixty-seven and two-tenths cubic inches. [39 Stat. L. 673.]

SEC. 3. **[Interstate shipments — failure to conform to Act — penalty — foreign shipments]** That it shall be unlawful to manufacture for shipment, or to sell for shipment, or to ship from any State or Territory of

the United States or the District of Columbia to any other State or Territory of the United States or the District of Columbia, any Climax baskets or other containers for small fruits, berries, or vegetables, whether filled or unfilled, which do not conform to the provisions of this Act; and any person guilty of a wilful violation of any of the provisions of this Act shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not exceeding \$25: *Provided*, That nothing herein contained shall apply to the manufacture, sale, or shipment of Climax baskets, baskets, or other containers for small fruits, berries, and vegetables when intended for export to foreign countries when such Climax baskets, baskets, or other containers for small fruits, berries, and vegetables accord with the specifications of the foreign purchasers or comply with the law of the country to which shipment is made or to be made. [39 Stat. L. 674.]

SEC. 4. [Examination of baskets, etc.—rules and regulations.] That the examination and test of Climax baskets, baskets, or other containers for small fruits, berries, and vegetables, for the purpose of determining whether such baskets or other containers comply with the provisions of this Act, shall be made by the Department of Agriculture, and the Secretary of Agriculture shall establish and promulgate rules and regulations allowing such reasonable tolerances and variations as may be found necessary. [39 Stat. L. 674.]

SEC. 5. [Duty of district attorney to prosecute violators.] That it shall be the duty of each district attorney, to whom satisfactory evidence of any violation of the Act is presented, to cause appropriate proceedings to be commenced and prosecuted in the proper court of the United States for the enforcement of the penalties as in such case herein provided. [39 Stat. L. 674.]

SEC. 6. [Prosecution of dealer—guaranty from manufacturer, etc., affording protection.] That no dealer shall be prosecuted under the provisions of this Act when he can establish a guaranty signed by the manufacturer, wholesaler, jobber, or other party residing within the United States from whom such Climax baskets, baskets, or other containers, as defined in this Act, were purchased, to the effect that said Climax baskets, baskets, or other containers are correct within the meaning of this Act. Said guaranty, to afford protection, shall contain the name and address of the party or parties making the sale of Climax baskets, baskets, or other containers to such dealer, and in such case said party or parties shall be amenable to the prosecutions, fines, and other penalties which would attach in due course to the dealer under the provisions of this Act. [39 Stat. L. 674.]

SEC. 7. [When act becomes effective.] That this Act shall be in force and effect from and after the first day of November, nineteen hundred and seventecn. [39 Stat. L. 674.]

III. FEDERAL FARM LOANS

An Act To provide capital for agricultural development, to create standard forms of investment based upon farm mortgage, to equalize rates of interest upon farm loans, to furnish a market for United States bonds, to create Government depositaries and financial agents for the United States, and for other purposes.

[Act of July 17, 1916, ch. 245, 39 Stat. L. 360.]

[Federal Farm Loan Act.]

[SEC. 1.] That the short title of this Act shall be "The Federal Farm Loan Act." Its administration shall be under the direction and control of the Federal Farm Loan Board hereinafter created. *[39 Stat. L. 360.]*

Definitions.

SEC. 2. That whenever the term "first mortgage" is used in this Act it shall be held to include such classes of first liens on farm lands as shall be approved by the Federal Farm Loan Board, and the credit instruments secured thereby. The term "farm loan bonds" shall be held to include all bonds secured by collateral deposited with a farm loan registrar under the terms of this Act; they shall be distinguished by the addition of the words "Federal," or "joint stock," as the case may be. *[39 Stat. L. 360.]*

Federal Farm Loan Board.

SEC. 3. That there shall be established at the seat of government in the Department of the Treasury a bureau charged with the execution of this Act and of all Acts amendatory thereof, to be known as the Federal Farm Loan Bureau, under the general supervision of a Federal Farm Loan Board.

Said Federal Farm Loan Board shall consist of five members, including the Secretary of the Treasury, who shall be a member and chairman ex officio, and four members to be appointed by the President of the United States, by and with the advice and consent of the Senate. Of the four members to be appointed by the President, not more than two shall be appointed from one political party, and all four of said members shall be citizens of the United States and shall devote their entire time to the business of the Federal Farm Loan Board; they shall receive an annual salary of \$10,000 payable monthly, together with actual necessary traveling expenses.

One of the members to be appointed by the President shall be designated by him to serve for two years, one for four years, one for six years, and one for eight years, and thereafter each member so appointed shall serve for a term of eight years, unless sooner removed for cause by the President. One of the members shall be designated by the President as the Farm Loan Commissioner, who shall be the active executive officer of said board. Each member of the Federal Farm Loan Board shall within fifteen days after notice of his appointment take and subscribe to the oath of office.

The first meeting of the Federal Farm Loan Board shall be held in Washington as soon as may be after the passage of this Act, at a date and place to be fixed by the Secretary of the Treasury.

No member of the Federal Farm Loan Board shall, during his continuance in office, be an officer or director of any other institution, association, or partnership engaged in banking, or in the business of making land mortgage loans or selling land mortgages. Before entering upon his duties as a member of the Federal Farm Loan Board each member shall certify under oath to the President that he is eligible under this section.

The President shall have the power, by and with the advice and consent of the Senate, to fill any vacancy occurring in the membership of the Federal Farm Loan Board; if such vacancy shall be filled during the recess of the Senate a commission shall be granted which shall expire at the end of the next session.

The Federal Farm Loan Board shall appoint a farm loan registrar in each land bank district to receive applications for issues of farm loan bonds and to perform such other services as are prescribed by this Act. It shall also appoint one or more land bank appraisers for each land bank district and as many land bank examiners as it shall deem necessary. Farm loan registrars, land bank appraisers, and land bank examiners appointed under this section shall be public officials and shall, during their continuance in office, have no connection with or interest in any other institution, association, or partnership engaged in banking or in the business of making land mortgage loans or selling land mortgages: *Provided*, That this limitation shall not apply to persons employed by the board temporarily to do special work.

The salaries and expenses of the Federal Farm Loan Board, and of farm loan registrars and examiners authorized under this section, shall be paid by the United States. Land bank appraisers shall receive such compensation as the Federal Farm Loan Board shall fix, and shall be paid by the Federal land banks and the joint stock land banks which they serve, in such proportion and in such manner as the Federal Farm Loan Board shall order.

The Federal Farm Loan Board shall be authorized and empowered to employ such attorneys, experts, assistants, clerks, laborers, and other employees as it may deem necessary to conduct the business of said board. All salaries and fees authorized in this section and not otherwise provided for shall be fixed in advance by said board and shall be paid in the same manner as the salaries of the Federal Farm Loan Board. All such attorneys, experts, assistants, clerks, laborers, and other employees, and all registrars, examiners, and appraisers shall be appointed without regard to the provisions of the Act of January sixteenth, eighteen hundred and eighty-three (volume twenty-two, United States Statutes at Large, page four hundred and three), and amendments thereto, or any rule or regulation made in pursuance thereof: *Provided*, That nothing herein shall prevent the President from placing said employees in the classified service.

Every Federal land bank shall semiannually submit to the Federal Farm Loan Board a schedule showing the salaries or rates of compensation paid to its officers and employees.

The Federal Farm Loan Board shall annually make a full report of its operations to the Speaker of the House of Representatives, who shall cause the same to be printed for the information of the Congress,

The Federal Farm Loan Board shall from time to time require examinations and reports of condition of all land banks established under the provisions of this Act and shall publish consolidated statements of the results thereof. It shall cause to be made appraisals of farm lands as provided by this Act, and shall prepare and publish amortization tables which shall be used by national farm loan associations and land banks organized under this Act.

The Federal Farm Loan Board shall prescribe a form for the statement of condition of national farm loan associations and land banks under its supervision, which shall be filled out quarterly by each such association or bank and transmitted to said board.

It shall be the duty of the Federal Farm Loan Board to prepare from time to time bulletins setting forth the principal features of this Act and through the Department of Agriculture or otherwise to distribute the same, particularly to the press, to agricultural journals, and to farmers' organizations; to prepare and distribute in the same manner circulars setting forth the principles and advantages of amortized farm loans and the protection afforded debtors under this Act, instructing farmers how to organize and conduct farm loan associations, and advising investors of the merits and advantages of farm loan bonds; and to disseminate in its discretion information for the further instruction of farmers regarding the methods and principles of cooperative credit and organization. Said board is hereby authorized to use a reasonable portion of the organization fund provided in section thirty-three of this Act for the objects specified in this paragraph, and is instructed to lay before the Congress at each session its recommendations for further appropriations to carry out said objects. [39 Stat. L. 360.]

For the Civil Service Act of Jan. 16, 1883, ch. 27, mentioned in this section, see 1 Fed. Stat. Ann. (1st ed.) 809; 2 Fed. Stat. Ann. (2d ed.) 155.

Federal Land Banks.

SEC. 4. That as soon as practicable the Federal Farm Loan Board shall divide the continental United States, excluding Alaska, into twelve districts, which shall be known as Federal land bank districts, and may be designated by number. Said districts shall be apportioned with due regard to the farm loan needs of the country, but no such district shall contain a fractional part of any State. The boundaries thereof may be readjusted from time to time in the discretion of said board.

The Federal Farm Loan Board shall establish in each Federal land bank district a Federal land bank, with its principal office located in such city within the district as said board shall designate. Each Federal land bank shall include in its title the name of the city in which it is located. Subject to the approval of the Federal Farm Loan Board, any Federal land bank may establish branches within the land bank district.

Each Federal land bank shall be temporarily managed by five directors appointed by the Federal Farm Loan Board. Said directors shall be citizens of the United States and residents of the district. They shall each give a surety bond, the premium on which shall be paid from the funds of the bank. They shall receive such compensation as the Federal Farm Loan Board shall fix. They shall choose from their number, by majority vote, a president, a vice president, a secretary and a treasurer. They are further

authorized and empowered to employ such attorneys, experts, assistants, clerks, laborers, and other employees as they may deem necessary, and to fix their compensation, subject to the approval of the Federal Farm Loan Board.

Said temporary directors shall, under their hands, forthwith make an organization certificate, which shall specifically state:

First. The name assumed by such bank.

Second. The district within which its operations are to be carried on, and the particular city in which its principal office is to be located.

Third. The amount of capital stock and the number of shares into which the same is to be divided: *Provided*, That every Federal land bank organized under this Act shall by its articles of association permit an increase of its capital stock from time to time for the purpose of providing for the issue of shares to national farm loan associations and stockholders who may secure loans through agents of Federal land banks in accordance with the provisions of this Act.

Fourth. The fact that the certificate is made to enable such persons to avail themselves of the advantages of this Act. The organization certificate shall be acknowledged before a judge or clerk of some court of record or notary public, and shall be, together with the acknowledgment thereof, authenticated by the seal of such court or notary, transmitted to the Farm Loan Commissioner, who shall record and carefully preserve the same in his office, where it shall be at all times open to public inspection.

The Federal Farm Loan Board is authorized to direct such changes in or additions to any such organization certificate, not inconsistent with this Act, as it may deem necessary or expedient.

Upon duly making or filing such organization certificate the bank shall become, as from the date of the execution of its organization certificate, a body corporate, and as such, and in the name designated in the organization certificate, it shall have power —

First. To adopt and use a corporate seal.

Second. To have succession until it is dissolved by Act of Congress or under the provisions of this Act.

Third. To make contracts.

Fourth. To sue and be sued, complain, interplead, and defend, in any court of law or equity, as fully as natural persons.

Fifth. To elect or appoint directors, and by its board of directors to elect a president and a vice president, appoint a secretary and a treasurer and other officers and employees, define their duties, require bonds of them, and fix the penalty thereof; by action of its board of directors dismiss such officers and employees, or any of them, at pleasure and appoint others to fill their places.

Sixth. To prescribe, by its board of directors, subject to the supervision and regulation of the Federal Farm Loan Board, by-laws not inconsistent with law, regulating the manner in which its stock shall be transferred, its directors elected, its officers elected or appointed, its property transferred, its general business conducted, and the privileges granted to it by law exercised and enjoyed.

Seventh. To exercise, by its board of directors or duly authorized officers or agents, subject to law, all such incidental powers as shall be necessary to carry on the business herein described.

After the subscriptions to stock in any Federal land bank by national farm loan associations, hereinafter authorized, shall have reached the sum of \$100,000, the officers and directors of said land bank shall be chosen as herein provided and shall, upon becoming duly qualified, take over the management of said land bank from the temporary officers selected under this section.

The board of directors of every Federal land bank shall be selected as hereinafter specified and shall consist of nine members, each holding office for three years. Six of said directors shall be known as local directors, and shall be chosen by and be representative of national farm loan associations; and the remaining three directors shall be known as district directors, and shall be appointed by the Federal Farm Loan Board and represent the public interest.

At least two months before each election the Farm Loan Commissioner shall notify each national farm loan association in writing that such election is to be held, giving the number of directors to be elected for its district, and requesting each association to nominate one candidate for each director to be elected. Within ten days of the receipt of such notice each association shall forward its nominations to said Farm Loan Commissioner. Said commissioner shall prepare a list of candidates for local directors consisting of the twenty persons securing the highest number of votes from national farm loan associations making such nominations.

At least one month before said election said Farm Loan Commissioner shall mail to each national farm loan association the list of candidates. The directors of each national farm loan association shall cast the vote of said association for as many candidates on said list as there are vacancies to be filled, and shall forward said vote to the Farm Loan Commissioner within ten days after said list of candidates is received by them. The candidates receiving the highest number of votes shall be elected as local directors. In case of a tie the Farm Loan Commissioner shall determine the choice.

The Federal Farm Loan Board shall designate one of the district directors to serve for three years and to act as chairman of the board of directors. It shall designate one of said directors to serve for a term of two years and one to serve for a term of one year. After the first appointments each district director shall be appointed for a term of three years.

At the first regular meeting of the board of directors of each Federal land bank it shall be the duty of the local directors to designate two of the local directors whose term of office shall expire in one year from the date of such meeting, two whose term of office shall expire in two years from said date, and two whose term of office shall expire in three years from said date. Thereafter every local director of a Federal land bank chosen as hereinbefore provided shall hold office for a term of three years. Vacancies that may occur in the board of directors shall be filled for the unexpired term in the manner provided for the original selection of such directors.

Directors of Federal land banks shall have been for at least two years residents of the district for which they are appointed or elected, and at least one district director shall be experienced in practical farming and actually engaged at the time of his appointment in farming operations within the district. No director of a Federal land bank shall, during his continuance in office, act as an officer, director, or employee of any other institution,

association, or partnership engaged in banking or in the business of making or selling land mortgage loans.

Directors of Federal land banks shall receive, in addition to any compensation otherwise provided, a reasonable allowance for necessary expenses in attending meetings of their respective boards, to be paid by the respective Federal land banks. Any compensation that may be provided by boards of directors of Federal land banks for directors, officers, or employees shall be subject to the approval of the Federal Farm Loan Board. [39 Stat. L. 362.]

Capital Stock of Federal Land Banks.

SEC. 5. That every Federal land bank shall have, before beginning business, a subscribed capital of not less than \$750,000. The Federal Farm Loan Board is authorized to prescribe the times and conditions of the payment of subscriptions to capital stock, to reject any subscription in its discretion, and to require subscribers to furnish adequate security for the payment thereof.

The capital stock of each Federal land bank shall be divided into shares of \$5 each, and may be subscribed for and held by any individual, firm, or corporation, or by the Government of any State or of the United States.

Stock held by national farm loan associations shall not be transferred or hypothecated, and the certificates therefor shall so state.

Stock owned by the Government of the United States in Federal land banks shall receive no dividends, but all other stock shall share in dividend distributions without preference. Each national farm loan association and the Government of the United States shall be entitled to one vote for each share of stock held by it in deciding all questions at meetings of shareholders, and no other shareholder shall be permitted to vote. Stock owned by the United States shall be voted by the Farm Loan Commissioner, as directed by the Federal Farm Loan Board.

It shall be the duty of the Federal Farm Loan Board, as soon as practicable after the passage of this Act, to open books of subscription for the capital stock of a Federal land bank in each Federal land bank district. If within thirty days after the opening of said books any part of the minimum capitalization of \$750,000 herein prescribed for Federal land banks shall remain unsubscribed, it shall be the duty of the Secretary of the Treasury to subscribe the balance thereof on behalf of the United States, said subscription to be subject to call in whole or in part by the board of directors of said land bank upon thirty days' notice with the approval of the Federal Farm Loan Board; and the Secretary of the Treasury is hereby authorized and directed to take out shares corresponding to the unsubscribed balance as called, and to pay for the same out of any moneys in the Treasury not otherwise appropriated. Thereafter no stock shall be issued except as hereinafter provided.

After the subscriptions to capital stock by national farm loan associations shall amount to \$750,000 in any Federal land bank, said bank shall apply semiannually to the payment and retirement of the shares of stock which were issued to represent the subscriptions to the original capital twenty-five per centum of all sums thereafter subscribed to capital stock until all such original capital stock is retired at par.

At least twenty-five per centum of that part of the capital of any Federal land bank for which stock is outstanding in the name of national farm loan associations shall be held in quick assets, and may consist of cash in the vaults of said land bank, or in deposits in member banks of the Federal reserve system, or in readily marketable securities which are approved under rules and regulations of the Federal Farm Loan Board: *Provided*, That not less than five per centum of such capital shall be invested in United States Government bonds. [39 Stat. L. 364.]

Government Depositaries.

SEC. 6. That all Federal land banks and joint stock land banks organized under this Act, when designated for that purpose by the Secretary of the Treasury, shall be depositaries of public money, except receipts from customs, under such regulations as may be prescribed by said Secretary; and they may also be employed as financial agents of the Government; and they shall perform all such reasonable duties, as depositaries of public money and financial agents of the Government, as may be required of them. And the Secretary of the Treasury shall require of the Federal land banks and joint stock land banks thus designated satisfactory security, by the deposit of United States bonds or otherwise, for the safekeeping and prompt payment of the public money deposited with them, and for the faithful performance of their duties as financial agents of the Government. No Government funds deposited under the provisions of this section shall be invested in mortgage loans or farm loan bonds. [39 Stat. L. 365.]

National Farm Loan Associations.

SEC. 7. That corporations, to be known as national farm loan associations, may be organized by persons desiring to borrow money on farm mortgage security under the terms of this Act. Such persons shall enter into articles of association which shall specify in general terms the object for which the association is formed and the territory within which its operations are to be carried on, and which may contain any other provision, not inconsistent with law, which the association may see fit to adopt for the regulation of its business and the conduct of its affairs. Said articles shall be signed by the persons uniting to form the association, and a copy thereof shall be forwarded to the Federal land bank for the district, to be filed and preserved in its office.

Every national farm loan association shall elect, in the manner prescribed for the election of directors of national banking associations, a board of not less than five directors, who shall hold office for the same period as directors of national banking associations. It shall be the duty of said board of directors to choose in such manner as they may prefer a secretary-treasurer, who shall receive such compensation as said board of directors shall determine. The board of directors shall elect a president, a vice president, and a loan committee of three members.

The directors and all officers except the secretary-treasurer shall serve without compensation, unless the payment of salaries to them shall be approved by the Federal Farm Loan Board. All officers and directors

except the secretary-treasurer shall, during their term of office, be bona fide residents of the territory within which the association is authorized to do business, and shall be shareholders of the association.

It shall be the duty of the secretary-treasurer of every national farm loan association to act as custodian of its funds and to deposit the same in such bank as the board of directors may designate, to pay over to borrowers all sums received for their account from the Federal land bank upon first mortgage as in this Act prescribed, and to meet all other obligations of the association, subject to the orders of the board of directors and in accordance with the by-laws of the association. It shall be the duty of the secretary-treasurer, acting under the direction of the national farm loan association, to collect, receipt for, and transmit to the Federal land bank payments of interest, amortization installments, or principal arising out of loans made through the association. He shall be the custodian of the securities, records, papers, certificates of stock, and all documents relating to or bearing upon the conduct of the affairs of the association. He shall furnish a suitable surety bond to be prescribed and approved by the Federal Farm Loan Board for the proper performance of the duties imposed upon him under this Act, which shall cover prompt collection and transmission of funds. He shall make a quarterly report to the Federal Farm Loan Board upon forms to be provided for that purpose. Upon request from said board said secretary-treasurer shall furnish information regarding the condition of the national farm loan association for which he is acting, and he shall carry out all duly authorized orders of said board. He shall assure himself from time to time that the loans made through the national farm loan association of which he is an officer are applied to the purposes set forth in the application of the borrower as approved, and shall forthwith report to the land bank of the district any failure of any borrower to comply with the terms of his application or mortgage. He shall also ascertain and report to said bank the amount of any delinquent taxes on land mortgaged to said bank and the name of the delinquent.

The reasonable expenses of the secretary-treasurer, the loan committee, and other officers and agents of national farm loan associations, and the salary of the secretary-treasurer, shall be paid from the general funds of the association, and the board of directors is authorized to set aside such sums as it shall deem requisite for that purpose and for other expenses of said association. When no such funds are available, the board of directors may levy an assessment on members in proportion to the amount of stock held by each, which may be repaid as soon as funds are available, or it may secure an advance from the Federal land bank of the district, to be repaid with interest at the rate of six per centum per annum, from dividends belonging to said association. Said Federal land bank is hereby authorized to make such advance and to deduct such repayment.

Ten or more natural persons who are the owners, or about to become the owners, of farm land qualified as security for a mortgage loan under section twelve of this Act, may unite to form a national farm loan association. They shall organize subject to the requirements and the conditions specified in this section and in section four of this Act, so far as the same may be applicable: *Provided*, That the board of directors may consist of

five members only, and instead of a secretary and a treasurer there shall be a secretary-treasurer, who need not be a shareholder of the association.

When the articles of association are forwarded to the Federal land bank of the district as provided in this section, they shall be accompanied by the written report of the loan committee as required in section ten of this Act, and by an affidavit stating that each of the subscribers is the owner, or is about to become the owner, of farm land qualified under section twelve of this Act as the basis of a mortgage loan; that the loan desired by each person is not more than \$10,000, nor less than \$100, and that the aggregate of the desired loans is not less than \$20,000; that said affidavit is accompanied by a subscription to stock in the Federal land bank equal to five per centum of the aggregate sum desired on mortgage loans; and that a temporary organization of said association has been formed by the election of a board of directors, a loan committee, and a secretary-treasurer who subscribes to said affidavit, giving his residence and post office address.

Upon receipt of such articles of association, with the accompanying affidavit and stock subscription, the directors of said Federal land bank shall send an appraiser to investigate the solvency and character of the applicants and the value of their lands, and shall then determine whether in their judgment a charter should be granted to such association. They shall forward such articles of association and the accompanying affidavit to the Federal Farm Loan Board with their recommendation. If said recommendation is unfavorable, the charter shall be refused.

If said recommendation is favorable, the Federal Farm Loan Board shall thereupon grant a charter to the applicants therefor, designating the territory in which such association may make loans, and shall forward said charter to said applicants through said Federal land bank: *Provided*, That said Federal Farm Loan Board may for good cause shown in any case refuse to grant a charter.

Upon receipt of its charter such national farm loan association shall be authorized and empowered to receive from the Federal land bank of the district sums to be loaned to its members under the terms and conditions of this Act.

Whenever any national farm loan association shall desire to secure for any member a loan on first mortgage from the Federal land bank of its district it shall subscribe for capital stock of said land bank to the amount of five per centum of such loan, such subscription to be paid in cash upon the granting of the loan by said land bank. Such capital stock shall be held by said land bank as collateral security for the payment of said loan, but said association shall be paid any dividends accruing and payable on said capital stock while it is outstanding. Such stock may, in the discretion of the directors, and with the approval of the Federal Farm Loan Board, be paid off at par and retired, and it shall be so paid off and retired upon full payment of the mortgage loan. In such case the national farm loan association shall pay off at par and retire the corresponding shares of its stock which were issued when said land bank stock was issued. The capital stock of a Federal land bank shall not be reduced to an amount less than five per centum of the principal of the outstanding farm loan bonds issued by it. [39 Stat. L. 365.]

Capital Stock of National Farm Loan Associations.

SEC. 8. That the shares in national farm loan associations shall be of the par value of \$5 each.

Every shareholder shall be entitled to one vote on each share of stock held by him at all elections of directors and in deciding all questions at meetings of shareholders: *Provided*, That the maximum number of votes which may be cast by any one shareholder shall be twenty.

No persons but borrowers on farm land mortgages shall be members or shareholders of national farm loan associations. Any person desiring to borrow on farm land mortgage through a national farm loan association shall make application for membership and shall subscribe for shares of stock in such farm loan association to an amount equal to five per centum of the face of the desired loan, said subscription to be paid in cash upon granting of the loan. If the application for membership is accepted and the loan is granted, the applicant shall, upon full payment therefor, become the owner of one share of capital stock in said loan association for each \$100 of the face of his loan, or any major fractional part thereof. Said capital stock shall be paid off at par and retired upon full payment of said loan. Said capital stock shall be held by said association as collateral security for the payment of said loan, but said borrower shall be paid any dividends accruing and payable on said capital stock while it is outstanding.

Every national farm loan association formed under this Act shall by its articles of association provide for an increase of its capital stock from time to time for the purpose of securing additional loans for its members and providing for the issue of shares to borrowers in accordance with the provisions of this Act. Such increases shall be included in the quarterly reports to the Federal Farm Loan Board. [39 Stat. L. 367.]

National Farm Loan Associations.—Special Provisions.

SEC. 9. That any person whose application for membership is accepted by a national farm loan association shall be entitled to borrow money on farm land mortgage upon filing his application in accordance with section eight and otherwise complying with the terms of this Act whenever the Federal land bank of the district has funds available for that purpose, unless said land bank or the Federal Farm Loan Board shall, in its discretion, otherwise determine.

Any person desiring to secure a loan through a national farm loan association under the provisions of this Act may, at his option, borrow from the Federal land bank through such association the sum necessary to pay for shares of stock subscribed for by him in the national farm loan association, such sum to be made a part of the face of the loan and paid off in amortization payments: *Provided, however*, That such addition to the loan shall not be permitted to increase said loan above the limitation imposed in subsection fifth of section twelve.

Subject to rules and regulations prescribed by the Federal Farm Loan Board, any national farm loan association shall be entitled to retain as a commission from each interest payment on any loan indorsed by it an amount to be determined by said board not to exceed one-eighth of one per centum semi-annually upon the unpaid principal of said loan, any amounts so retained as commissions to be deducted from dividends payable to such

farm loan association by the Federal land bank, and to make application to the land bank of the district for loans not exceeding in the aggregate one-fourth of its total stock holdings in said land bank. The Federal land banks shall have power to make such loans to associations applying therefor and to charge interest at a rate not exceeding six per centum per annum.

Shareholders of every national farm loan association shall be held individually responsible, equally and ratably, and not one for another, for all contracts, debts, and engagements of such association to the extent of the amount of stock owned by them at the par value thereof, in addition to the amount paid in and represented by their shares.

After a charter has been granted to a national farm loan association, any natural person who is the owner, or about to become the owner, of farm land qualified under section twelve of this Act as the basis of a mortgage loan, and who desires to borrow on a mortgage of such farm land, may become a member of the association by a two-thirds vote of the directors upon subscribing for one share of the capital stock of such association for each \$100 of the face of his proposed loan or any major fractional part thereof. He shall at the same time file with the secretary-treasurer his application for a mortgage loan, giving the particulars required by section twelve of this Act. [39 Stat. L. 368.]

Appraisal.

SEC. 10. That whenever an application for a mortgage loan is made to a national farm loan association, it shall be first referred to the loan committee provided for in section seven of this Act. Said loan committee shall examine the land which is offered as security for the desired loan and shall make a detailed written report signed by all three members, giving the appraisal of said land as determined by them, and such other information as may be required by rules and regulations to be prescribed by the Federal Farm Loan Board. No loan shall be approved by the directors unless said loan committee agrees upon a favorable report.

The written report of said loan committee shall be submitted to the Federal land bank, together with the application for the loan, and the directors of said land bank shall examine said written report when they pass upon the loan application which it accompanies, but they shall not be bound by said appraisal.

Before any mortgage loan is made by any Federal land bank, or joint stock land bank, it shall refer the application and written report of the loan committee to one or more of the land bank appraisers appointed under the authority of section three of this Act, and such appraiser or appraisers shall investigate and make a written report upon the land offered as security for said loan. No such loan shall be made by said land bank unless said written report is favorable.

Forms for appraisal reports for farm loan associations and land banks shall be prescribed by the Federal Farm Loan Board.

Land bank appraisers shall make such examinations and appraisals and conduct such investigations, concerning farm loan bonds and first mortgages, as the Federal Farm Loan Board shall direct.

No borrower under this Act shall be eligible as an appraiser under this section, but borrowers may act as members of a loan committee in any case

where they are not personally interested in the loan under consideration. When any member of a loan committee or of a board of directors is interested, directly or indirectly, in a loan, a majority of the board of directors of any national farm loan association shall appoint a substitute to act in his place in passing upon such loan. [39 Stat. L. 369.]

Powers of National Farm Loan Associations.

SEC. 11. That every national farm loan association shall have power:

First. To indorse, and thereby become liable for the payment of, mortgages taken from its shareholders by the Federal land bank of its district.

Second. To receive from the Federal land bank of its district funds advanced by said land bank, and to deliver said funds to its shareholders on receipt of first mortgages qualified under section twelve of this Act.

Third. To acquire and dispose of such property, real or personal, as may be necessary or convenient for the transaction of its business.

Fourth. To issue certificates against deposits of current funds bearing interest for not longer than one year at not to exceed four per centum per annum after six days from date, convertible into farm loan bonds when presented at the Federal land bank of the district in the amount of \$25 or any multiple thereof. Such deposits, when received, shall be forthwith transmitted to said land bank, and be invested by it in the purchase of farm loan bonds issued by a Federal land bank or in first mortgages as defined by this Act. [39 Stat. L. 369.]

Restrictions on Loans Based on First Mortgages.

SEC. 12. That no Federal land bank organized under this Act shall make loans except upon the following terms and conditions:

First. Said loans shall be secured by duly recorded first mortgages on farm land within the land bank district in which the bank is situated.

Second. Every such mortgage shall contain an agreement providing for the repayment of the loan on an amortization plan by means of a fixed number of annual or semiannual installments sufficient to cover, first, a charge on the loan, at a rate not exceeding the interest rate in the last series of farm loan bonds issued by the land bank making the loan; second, a charge for administration and profits at a rate not exceeding one per centum per annum on the unpaid principal, said two rates combined constituting the interest rate on the mortgage; and, third, such amounts to be applied on the principal as will extinguish the debt within an agreed period, not less than five years nor more than forty years: *Provided*, That after five years from the date upon which a loan is made additional payments in sums of \$25 or any multiple thereof for the reduction of the principal, or the payment of the entire principal, may be made on any regular installment date under the rules and regulations of the Federal Farm Loan Board: *And provided further*, That before the first issue of farm loan bonds by any land bank the interest rate on mortgages may be determined in the discretion of said land bank subject to the provisions and limitations of this Act.

Third. No loan on mortgage shall be made under this Act at a rate of interest exceeding six per centum per annum, exclusive of amortization payments.

Fourth. Such loans may be made for the following purposes and for no other:

- (a) To provide for the purchase of land for agricultural uses.
- (b) To provide for the purchase of equipment, fertilizers and live stock necessary for the proper and reasonable operation of the mortgaged farm; the term "equipment" to be defined by the Federal Farm Loan Board.
- (c) To provide buildings and for the improvement of farm lands; the term "improvement" to be defined by the Federal Farm Loan Board.
- (d) To liquidate indebtedness of the owner of the land mortgaged, existing at the time of the organization of the first national farm loan association established in or for the county in which the land mortgaged is situated, or indebtedness subsequently incurred for purposes mentioned in this section.

Fifth. No such loan shall exceed fifty per centum of the value of the land mortgaged and twenty per centum of the value of the permanent, insured improvements thereon, said value to be ascertained by appraisal, as provided in section ten of this Act. In making said appraisal the value of the land for agricultural purposes shall be the basis of appraisal and the earning power of said land shall be a principal factor.

A reappraisal may be permitted at any time in the discretion of the Federal land bank, and such additional loan may be granted as such reappraisal will warrant under the provisions of this paragraph. Whenever the amount of the loan applied for exceeds the amount that may be loaned under the appraisal as herein limited, such loan may be granted to the amount permitted under the terms of this paragraph without requiring a new application or appraisal.

Sixth. No such loan shall be made to any person who is not at the time, or shortly to become, engaged in the cultivation of the farm mortgaged. In case of the sale of the mortgaged land, the Federal land bank may permit said mortgage and the stock interests of the vendor to be assumed by the purchaser. In case of the death of the mortgagor, his heir or heirs, or his legal representative or representatives, shall have the option, within sixty days of such death, to assume the mortgage and stock interests of the deceased.

Seventh. The amount of loans to any one borrower shall in no case exceed a maximum of \$10,000, nor shall any loan be for a less sum than \$100.

Eighth. Every applicant for a loan under the terms of this Act shall make application on a form to be prescribed for that purpose by the Federal Farm Loan Board, and such applicant shall state the objects to which the proceeds of said loan are to be applied, and shall afford such other information as may be required.

Ninth. Every borrower shall pay simple interest on defaulted payments at the rate of eight per centum per annum, and by express covenant in his mortgage deed shall undertake to pay when due all taxes, liens, judgments, or assessments which may be lawfully assessed against the land mortgaged. Taxes, liens, judgments, or assessments not paid when due, and paid by the mortgagee shall become a part of the mortgage debt and shall bear simple interest at the rate of eight per centum per annum. Every borrower shall undertake to keep insured to the satisfaction of the Federal Farm Loan Board all buildings the value of which was a factor in determining the amount of the loan. Insurance shall be made payable to the

mortgagee as its interest may appear at time of loss, and, at the option of the mortgagor and subject to general regulations of the Federal Farm Loan Board, sums so received may be used to pay for reconstruction of the buildings destroyed.

Tenth. Every borrower who shall be granted a loan under the provisions of this Act shall enter into an agreement, in form and under conditions to be prescribed by the Federal Farm Loan Board, that if the whole or any portion of his loan shall be expended for purposes other than those specified in his original application, or if the borrower shall be in default in respect to any condition or covenant of the mortgage, the whole of said loan shall, at the option of the mortgagee, become due and payable forthwith: *Provided*, That the borrower may use part of said loan to pay for his stock in the farm loan association, and the land bank holding such mortgage may permit said loan to be used for any purpose specified in subsection fourth of this section.

Eleventh. That no loan or the mortgage securing the same shall be impaired or invalidated by reason of the exercise of any power by any Federal land bank or national farm loan association in excess of the powers herein granted or any limitations thereon.

Funds transmitted to farm loan associations by Federal land banks to be loaned to its members shall be in current funds, or farm loan bonds, at the option of the borrower. [39 Stat. L. 370.]

Powers of Federal Land Banks.

SEC. 13. That every Federal land bank shall have power, subject to the limitations and requirements of this Act —

First. To issue, subject to the approval of the Federal Farm Loan Board, and to sell farm loan bonds of the kinds authorized in this Act, to buy the same for its own account, and to retire the same at or before maturity.

Second. To invest such funds as may be in its possession in the purchase of qualified first mortgages on farm lands situated within the Federal land bank district within which it is organized or for which it is acting.

Third. To receive and to deposit in trust with the farm loan registrar for the district, to be by him held as collateral security for farm loan bonds, first mortgages upon farm land qualified under section twelve of this Act, and to empower national farm loan associations, or duly authorized agents, to collect and immediately pay over to said land banks the dues, interest, amortization installments and other sums payable under the terms, conditions, and covenants of the mortgages and of the bonds secured thereby.

Fourth. To acquire and dispose of —

(a) Such property, real or personal, as may be necessary or convenient for the transaction of its business, which, however, may be in part leased to others for revenue purposes.

(b) Parcels of land acquired in satisfaction of debts or purchased at sales under judgments, decrees, or mortgages held by it. But no such bank shall hold title and possession of any real estate purchased or acquired to secure any debt due to it, for a longer period than five years, except with the special approval of the Federal Farm Loan Board in writing.

Fifth. To deposit its securities, and its current funds subject to check, with any member bank of the Federal Reserve System, and to receive interest on the same as may be agreed.

Sixth. To accept deposits of securities or of current funds from national farm loan associations holding its shares, but to pay no interest on such deposits.

Seventh. To borrow money, to give security therefor, and to pay interest thereon.

Eighth. To buy and sell United States bonds.

Ninth. To charge applicants for loans and borrowers, under rules and regulations promulgated by the Federal Farm Loan Board, reasonable fees not exceeding the actual cost of appraisal and determination of title. Legal fees and recording charges imposed by law in the State where the land to be mortgaged is located may also be included in the preliminary costs of negotiating mortgage loans. The borrower may pay such fees and charges or he may arrange with the Federal land bank making the loan to advance the same, in which case said expenses shall be made a part of the face of the loan and paid off in amortization payments. Such addition to the loan shall not be permitted to increase said loan above the limitations provided in section twelve. [39 Stat. L. 372.]

Restrictions on Federal Land Banks.

SEC. 14. That no Federal land bank shall have power —

First. To accept deposits of current funds payable upon demand except from its own stockholders, or to transact any banking or other business not expressly authorized by the provisions of this Act.

Second. To loan on first mortgage except through national farm loan associations as provided in section seven and section eight of this Act, or through agents as provided in section fifteen.

Third. To accept any mortgages on real estate except first mortgages created subject to all limitations imposed by section twelve of this Act, and those taken as additional security for existing loans.

Fourth. To issue or obligate itself for outstanding farm loan bonds in excess of twenty times the amount of its capital and surplus, or to receive from any national farm loan association additional mortgages when the principal remaining unpaid upon mortgages already received from such association shall exceed twenty times the amount of its capital stock owned by such association.

Fifth. To demand or receive, under any form or pretense, any commission or charge not specifically authorized in this Act. [39 Stat. L. 372.]

Agents of Federal Land Banks.

SEC. 15. That whenever, after this Act shall have been in effect one year, it shall appear to the Federal Farm Loan Board that national farm loan associations have not been formed, and are not likely to be formed, in any locality, because of peculiar local conditions, said board may, in its discretion, authorize Federal land banks to make loans on farm lands through agents approved by said board.

Such loans shall be subject to the same conditions and restrictions as if the same were made through national farm loan associations, and each borrower shall contribute five per centum of the amount of his loan to the capital of the Federal land bank, and shall become the owner of as much capital stock of the land bank as such contribution shall warrant.

No agent other than a duly incorporated bank, trust company, mortgage company, or savings institution, chartered by the State in which it has its principal office, shall be employed under the provisions of this section.

Federal land banks may pay to such agents the actual expense of appraising the land offered as security for a loan, examining and certifying the title thereof, and making, executing and recording the mortgage papers; and in addition may allow said agents not to exceed one-half of one per centum per annum upon the unpaid principal of said loan, such commission to be deducted from dividends payable to the borrower on his stock in the Federal land bank.

Actual expenses paid to agents under the provisions of this section shall be added to the face of the loan and paid off in amortization payments subject to the limitations provided in subsection ninth of section thirteen of this Act.

Said agents, when required by the Federal land banks, shall collect and forward to such banks without charge all interest and amortization payments on loans indorsed by them.

Any agent negotiating any such loans shall indorse the same and become liable for the payment thereof, and for any default by the mortgagor, on the same terms and under the same penalties as if the loan had been originally made by said agent as principal and sold by said agent to said land bank, but the aggregate of the unpaid principal of mortgage loans received from any such agent shall not exceed ten times its capital and surplus.

If at any time the district represented by any agent under the provisions of this section shall, in the judgment of the Federal Farm Loan Board, be adequately served by national farm loan associations, no further loans shall be negotiated therein by agents under this section. [39 Stat. L. 373.]

Joint Stock Land Banks.

SEC. 16. That corporations, to be known as joint stock land banks, for carrying on the business of lending on farm mortgage security and issuing farm land loans, may be formed by any number of natural persons not less than ten. They shall be organized subject to the requirements and under the conditions set forth in section four of this Act, so far as the same may be applicable: *Provided*, That the board of directors of every joint stock land bank shall consist of not less than five members.

Shareholders of every joint stock land bank organized under this Act shall be held individually responsible, equally and ratably, and not one for another, for all contracts, debts, and engagements of such bank to the extent of the amount of stock owned by them at the par value thereof, in addition to the amount paid in and represented by their shares.

Except as otherwise provided, joint stock land banks shall have the powers of, and be subject to all the restrictions and conditions imposed on, Federal land banks by this Act, so far as such restrictions and conditions are applicable: *Provided, however*, That the Government of the United States shall not purchase or subscribe for any of the capital stock of any such bank; and each shareholder of any such bank shall have the same voting privileges as holders of shares in national banking associations.

No joint stock land bank shall have power to issue or obligate itself for outstanding farm loan bonds in excess of fifteen times the amount of its

capital and surplus, or to receive deposits or to transact any banking or other business not expressly authorized by the provisions of this Act.

No joint stock land bank shall be authorized to do business until capital stock to the amount of at least \$250,000 has been subscribed, one-half thereof paid in cash and the balance subject to call by the board of directors, and a charter has been issued to it by the Federal Farm Loan Board.

No joint stock land bank shall issue any bonds until after the capital stock is entirely paid up.

Farm loan bonds issued by joint stock land banks shall be so engraved as to be readily distinguished in form and color from farm loan bonds issued by Federal land banks, and shall otherwise bear such distinguishing marks as the Federal Farm Loan Board shall direct.

Joint stock land banks shall not be subject to the provisions of subsection (b) of section seventeen of this Act as to interest rates on mortgage loans or farm loan bonds, nor to the provisions of subsections first, fourth, sixth, seventh, and tenth of section twelve as to restrictions on mortgage loans: *Provided, however,* That no loans shall be made which are not secured by first mortgages on farm lands within the State in which such joint stock land bank has its principal office, or within some one State contiguous to such State. Such joint stock land banks shall be subject to all other restrictions on mortgage loans imposed on Federal land banks in section twelve of this Act.

Joint stock land banks shall in no case charge a rate of interest on farm loans exceeding by more than one per centum the rate of interest established for the last series of farm loan bonds issued by them.

Joint stock land banks shall in no case demand or receive, under any form or pretense, any commission or charge not specifically authorized in this Act.

Each joint stock land bank organized under this Act shall have authority to issue bonds based upon mortgages taken by it in accordance with the terms of this Act. Such bonds shall be in form prescribed by the Federal Farm Loan Board, and it shall be stated in such bonds that such bank is organized under section sixteen of this Act, is under Federal supervision, and operates under the provisions of this Act. [39 Stat. L. 374.]

Powers of Federal Farm Loan Board.

SEC. 17. That the Federal Farm Loan Board shall have power —

(a) To organize and charter Federal land banks, and to charter national farm loan associations and joint stock land banks subject to the provisions of this Act, and in its discretion to authorize them to increase their capital stock.

(b) To review and alter at its discretion the rate of interest to be charged by Federal land banks for loans made by them under the provisions of this Act, said rates to be uniform so far as practicable.

(c) To grant or refuse to Federal land banks, or joint stock land banks, authority to make any specific issue of farm loan bonds.

(d) To make rules and regulations respecting the charges made to borrowers on loans under this Act for expenses in appraisal, determination of title, and recording.

(e) To require reports and statements of condition and to make examinations of all banks or associations doing business under the provisions of this Act.

(f) To prescribe the form and terms of farm loan bonds, and the form, terms, and penal sums of all surety bonds required under this Act and of such other surety bonds as they shall deem necessary, such surety bonds to cover financial loss as well as faithful performance of duty.

(g) To require Federal land banks to pay forthwith to any Federal land bank their equitable proportion of any sums advanced by said land bank to pay the coupons of any other land bank, basing said required payments on the amount of farm loan bonds issued by each land bank and actually outstanding at the time of such requirement.

(h) To suspend or to remove for cause any district director or any registrar, appraiser, examiner, or other official appointed by said board under authority of section three of this Act, the cause of such suspension or removal to be communicated forthwith in writing by the Federal Farm Loan Board to the person suspended or removed, and in case of a district director to the proper Federal land bank.

(i) To exercise general supervisory authority over the Federal land banks, the national farm loan associations, and the joint stock land banks herein provided for.

(j) To exercise such incidental powers as shall be necessary or requisite to fulfill its duties and carry out the purposes of this Act. [39 Stat. L. 375.]

Applications for Farm Loan Bonds.

SEC. 18. That any Federal land bank, or joint stock land bank, which shall have voted to issue farm loan bonds under this Act, shall make written application to the Federal Farm Loan Board, through the farm loan registrar of the district, for approval of such issue. With said application said land bank shall tender to said farm loan registrar as collateral security first mortgages on farm lands qualified under the provisions of section twelve, section fifteen, or section sixteen of this Act, or United States Government bonds, not less in aggregate amount than the sum of the bonds proposed to be issued. Said bank shall furnish with such mortgages a schedule containing a description thereof and such further information as may be prescribed by the Federal Farm Loan Board.

Upon receipt of such application said farm loan registrar shall verify said schedule and shall transmit said application and said schedule to the Federal Farm Loan Board, giving such further information pertaining thereto as he may possess. The Federal Farm Loan Board shall forthwith cause to be made such investigation and appraisalment of the securities tendered as it shall deem wise, and it shall grant in whole or in part, or reject entirely, such application.

The Federal Farm Loan Board shall promptly transmit its decision as to any issue of farm loan bonds to the land bank applying for the same and to the farm loan registrar of the district. Said registrar shall furnish, in writing, such information regarding any issue of farm loan bonds as the Federal Farm Loan Board may at any time require.

No issue of farm loan bonds shall be authorized unless the Federal Farm Loan Board shall approve such issue in writing. [39 Stat. L. 375.]

Issue of Farm Loan Bonds.

SEC. 19. That whenever any farm loan registrar shall receive from the Federal Farm Loan Board notice that it has approved any issue of farm loan bonds under the provisions of section eighteen he shall forthwith take such steps as may be necessary, in accordance with the provisions of this Act, to insure the prompt execution of said bonds and the delivery of the same to the land bank applying therefor.

Whenever the Federal Farm Loan Board shall reject entirely any application for an issue of farm loan bonds, the first mortgages and bonds tendered to the farm loan registrar as collateral security therefor shall be forthwith returned to said land bank by him.

Whenever the Federal Farm Loan Board shall approve an issue of farm loan bonds, the farm loan registrar having the custody of the first mortgages and bonds tendered as collateral security for such issue of bonds shall retain in his custody those first mortgages and bonds which are to be held as collateral security, and shall return to the bank owning the same any of said mortgages and bonds which are not to be held by him as collateral security. The land bank which is to issue said farm loan bonds shall transfer to said registrar, by assignment, in trust, all first mortgages and bonds which are to be held by said registrar as collateral security, said assignment providing for the right of redemption at any time by payment as provided in this Act and reserving the right of substitution of other mortgages qualified under sections twelve, fifteen, and sixteen of this Act. Said mortgages and bonds shall be deposited in such deposit vault or bank as the Federal Farm Loan Board shall approve, subject to the control of said registrar and in his name as trustee for the bank issuing the farm loan bonds and for the prospective holders of said farm loan bonds.

No mortgage shall be accepted by a farm loan registrar from a land bank as part of an offering to secure an issue of farm loan bonds, either originally or by substitution, except first mortgages made subject to the conditions prescribed in said sections twelve, fifteen, and sixteen.

It shall be the duty of each farm loan registrar to see that the farm loan bonds delivered by him and outstanding do not exceed the amount of collateral security pledged therefor. Such registrar may, in his discretion, temporarily accept, in place of mortgages withdrawn, United States Government bonds or cash.

The Federal Farm Loan Board may, at any time, call upon any land bank for additional security to protect the bonds issued by it. [39 Stat. L. 376.]

Form of Farm Loan Bonds.

SEC. 20. That bonds provided for in this Act shall be issued in denominations of \$25, \$50, \$100, \$500, and \$1,000; they shall run for specified minimum and maximum periods, subject to payment and retirement, at the option of the land bank, at any time after five years from the date of their issue. They shall have interest coupons attached: payable semiannually, and shall be issued in series of not less than \$50,000, the amount and terms to be fixed by the Federal Farm Loan Board. They shall bear a rate of interest not to exceed five per centum per annum.

The Federal Farm Loan Board shall prescribe rules and regulations

concerning the circumstances and manner in which farm loan bonds shall be paid and retired under the provisions of this Act.

Farm loan bonds shall be delivered through the registrar of the district to the bank applying for the same.

In order to furnish farm loan bonds for delivery at the Federal land banks and joint stock land banks, the Secretary of the Treasury is hereby authorized to prepare suitable bonds in such form, subject to the provisions of this Act, as the Federal Farm Loan Board may approve, such bonds when prepared to be held in the Treasury subject to delivery upon order of the Federal Farm Loan Board. The engraved plates, dies, bed-pieces, and so forth, executed in connection therewith shall remain in the custody of the Secretary of the Treasury. Any expenses incurred in the preparation, custody, and delivery of such farm loan bonds shall be paid by the Secretary of the Treasury from any funds in the Treasury not otherwise appropriated: *Provided, however,* That the Secretary shall be reimbursed for such expenditures by the Federal Farm Loan Board through assessment upon the farm land banks in proportion to the work executed. They may be exchanged into registered bonds of any amount, and reexchanged into coupon bonds, at the option of the holder, under rules and regulations to be prescribed by the Federal Farm Loan Board. [39 Stat. L. 377.]

Special Provisions of Farm Loan Bonds.

SEC. 21. That each land bank shall be bound in all respects by the acts of its officers in signing and issuing farm loan bonds, and by the acts of the Federal Farm Loan Board in authorizing their issue.

Every Federal land bank issuing farm loan bonds shall be primarily liable therefor, and shall also be liable, upon presentation of farm loan bond coupons, for interest payments due upon any farm loan bonds issued by other Federal land banks and remaining unpaid in consequence of the default of such other land banks; and every such bank shall likewise be liable for such portion of the principal of farm loan bonds so issued as shall not be paid after the assets of any such other land banks shall have been liquidated and distributed: *Provided,* That such losses, if any, either of interest or of principal, shall be assessed by the Federal Farm Loan Board against solvent land banks liable therefor in proportion to the amount of farm loan bonds which each may have outstanding at the time of such assessment.

Every Federal land bank shall by appropriate action of its board of directors, duly recorded in its minutes, obligate itself to become liable on farm loan bonds as provided in this section.

Every farm loan bond issued by a Federal land bank shall be signed by its president and attested by its secretary, and shall contain in the face thereof a certificate signed by the Farm Loan Commissioner to the effect that it is issued under the authority of the Federal Farm Loan Act, has the approval in form and issue of the Federal Farm Loan Board, and is legal and regular in all respects; that it is not taxable by National, State, municipal, or local authority; that it is issued against collateral security of United States Government bonds, or indorsed first mortgages on farm lands, at least equal in amount to the bonds issued; and that all Federal land banks are liable for the payment of each bond. [39 Stat. L. 377.]

Application of Amortization and Interest Payments.

SEC. 22. That whenever any Federal land bank, or joint stock land bank, shall receive any interest, amortization or other payments upon any first mortgage or bond pledged as collateral security for the issue of farm loan bonds, it shall forthwith notify the farm loan registrar of the items so received. Said registrar shall forthwith cause such payment to be duly credited upon the mortgage entitled to such credit. Whenever any such mortgage is paid in full, said registrar shall cause the same to be canceled and delivered to the proper land bank, which shall promptly satisfy and discharge the lien of record and transmit such canceled mortgage to the original maker thereof, or his heirs, administrators, executors, or assigns.

Upon written application by any Federal land bank, or joint stock land bank, to the farm loan registrar, it may be permitted, in the discretion of said registrar, to withdraw any mortgages or bonds pledged as collateral security under this Act, and to substitute therefor other similar mortgages or United States Government bonds not less in amount than the mortgages or bonds desired to be withdrawn.

Whenever any farm loan bonds, or coupons or interest payments of such bonds, are due under their terms, they shall be payable at the land bank by which they were issued, in gold or lawful money, and upon payment shall be duly canceled by said bank. At the discretion of the Federal Farm Loan Board, payment of any farm loan bond or coupon or interest payment may, however, be authorized to be made at any Federal land bank, any joint stock land bank, or any other bank, under rules and regulations to be prescribed by the Federal Farm Loan Board.

When any land bank shall surrender to the proper farm loan registrar any farm bonds of any series, canceled or uncanceled, said land bank shall be entitled to withdraw first mortgages and bonds pledged as collateral security for any of said series of farm loan bonds to an amount equal to the farm loan bonds so surrendered, and it shall be the duty of said registrar to permit and direct the delivery of such mortgages and bonds to such land bank.

Interest payments on hypothecated first mortgages shall be at the disposal of the land bank pledging the same, and shall be available for the payment of coupons and the interest of farm loan bonds as they become due.

Whenever any bond matures, or the interest on any registered bond is due, or the coupon on any coupon bond matures, and the same shall be presented for payment as provided in this Act, the full face value thereof shall be paid to the holder.

Amortization and other payments on the principal of first mortgages held by a farm loan registrar as collateral security for the issue of farm loan bonds shall constitute a trust fund in the hands of the Federal land bank or joint stock land bank receiving the same, and shall be applied or employed as follows:

In the case of a Federal land bank —

- (a) To pay off farm loan bonds issued by said bank as they mature.
- (b) To purchase at or below par farm loan bonds issued by said bank or by any other Federal land bank.

(c) To loan on first mortgages on farm lands within the land bank district, qualified under this Act as collateral security for an issue of farm loan bonds.

(d) To purchase United States Government bonds.

In the case of a joint stock land bank —

(a) To pay off farm loan bonds issued by said bank as they mature.

(b) To purchase at or below par farm loan bonds.

(c) To loan on first mortgages qualified under section sixteen of this Act.

(d) To purchase United States Government bonds.

The farm loan bonds, first mortgages, United States Government bonds, or cash constituting the trust fund aforesaid, shall be forthwith deposited with the farm loan registrar as substituted collateral security in place of the sums paid on the principal of indorsed mortgages held by him in trust.

Every Federal land bank, or joint stock land bank, shall notify the farm loan registrar of the disposition of all payments made on the principal of mortgages held as collateral security for an issue of farm loan bonds, and said registrar is authorized, at his discretion, to order any of such payments, or the proceeds thereof, wherever deposited or however invested, to be immediately transferred to his account as trustee aforesaid. [39 Stat. L. 378.]

Reserves and Dividends of Land Banks.

SEC. 23. That every Federal land bank, and every joint stock land bank, shall semiannually carry to reserve account twenty-five per centum of its net earnings until said reserve account shall show a credit balance equal to twenty per centum of the outstanding capital stock of said land bank. Whenever said reserve shall have been impaired, said balance of twenty per centum shall be fully restored before any dividends are paid. After said reserve has reached the sum of twenty per centum of the outstanding capital stock, five per centum of the net earnings shall be annually added thereto. For the period of two years from the date when any default occurs in the payment of the interest, amortization installments, or principal on any first mortgage, by both mortgagor and indorser, the amount so defaulted shall be carried to a suspense account, and at the end of the two-year period specified, unless collected, shall be debited to reserve account.

After deducting the twenty-five per centum or the five per centum hereinbefore directed to be deducted for credit to reserve account, any Federal land bank or joint stock land bank may declare a dividend to shareholders of the whole or any part of the balance of its net earnings. The reserves of land banks shall be invested in accordance with rules and regulations to be prescribed by the Federal Farm Loan Board. [39 Stat. L. 379.]

Reserve and Dividends of National Farm Loan Associations.

SEC. 24. That every national farm loan association shall, out of its net earnings, semiannually carry to reserve account a sum not less than ten per centum of such net earnings until said reserve account shall show a credit balance equal to twenty per centum of the outstanding capital stock of said association.

Whenever said reserve shall have been impaired, said credit balance of twenty per centum shall be fully restored before any dividends are paid. After said reserve has reached said sum of twenty per centum, two per centum of the net earnings shall be annually added thereto.

After deducting the ten per centum or the two per centum hereinbefore directed to be credited to reserve account, said association may, at its discretion, declare a dividend to shareholders of the whole or any part of the balance of said net earnings.

The reserves of farm loan associations shall be invested in accordance with rules and regulations to be prescribed by the Federal Farm Loan Board.

Whenever any farm loan association shall be voluntarily liquidated a sum equal to its reserve account as herein required shall be paid to and become the property of the Federal land bank in which such loan association may be a shareholder. [39 Stat. L. 379.]

Defaulted Loans.

SEC. 25. That if there shall be default under the terms of any indorsed first mortgage held by a Federal land bank under the provisions of this Act, the national farm loan association or agent through which said mortgage was received by said Federal land bank shall be notified of said default. Said association or agent may thereupon be required, within thirty days after such notice, to make good said default, either by payment of the amount unpaid thereon in cash, or by the substitution of an equal amount of farm loan bonds issued by said land bank, with all unmatured coupons attached. [39 Stat. L. 380.]

Exemption from Taxation.

SEC. 26. That every Federal land bank and every national farm loan association, including the capital and reserve or surplus therein and the income derived therefrom, shall be exempt from Federal, State, municipal, and local taxation, except taxes upon real estate held, purchased, or taken by said bank or association under the provisions of section eleven and section thirteen of this Act. First mortgages executed to Federal land banks, or to joint stock land banks, and farm loan bonds issued under the provisions of this Act, shall be deemed and held to be instrumentalities of the Government of the United States, and as such they and the income derived therefrom shall be exempt from Federal, State, municipal, and local taxation.

Nothing herein shall prevent the shares in any joint stock land bank from being included in the valuation of the personal property of the owner or holder of such shares, in assessing taxes imposed by authority of the State within which the bank is located; but such assessment and taxation shall be in manner and subject to the conditions and limitations contained in section fifty-two hundred and nineteen of the Revised Statutes with reference to the shares of national banking associations.

Nothing herein shall be construed to exempt the real property of Federal and joint stock land banks and national farm loan associations from either State, county, or municipal taxes, to the same extent, according to its value, as other real property is taxed. [39 Stat. L. 380.]

Investment in Farm Loan Bonds:

SEC. 27. That farm loan bonds issued under the provisions of this Act by Federal land banks or joint stock land banks shall be a lawful investment for all fiduciary and trust funds, and may be accepted as security for all public deposits.

Any member bank of the Federal Reserve System may buy and sell farm loan bonds issued under the authority of this Act.

Any Federal reserve bank may buy and sell farm loan bonds issued under this Act to the same extent and subject to the same limitations placed upon the purchase and sale by said banks of State, county, district, and municipal bonds under subsection (b) of section fourteen of the Federal Reserve Act approved December twenty-third, nineteen hundred and thirteen. [39 Stat. L. 380.]

For the Act of Dec. 23, 1913, ch. 6, § 14, mentioned in the text, see 1914 Supp. Fed. Stat. Ann. (1st ed.) 274; 6 Fed. Stat. Ann. (2d ed.) 832.

Examinations.

SEC. 28. That the Federal Farm Loan Board shall appoint as many land bank examiners as in its judgment may be required to make careful examinations of the banks and associations permitted to do business under this Act.

Said examiners shall be subject to the same requirements, responsibilities and penalties as are applicable to national bank examiners under the national bank Act, the Federal Reserve Act and other provisions of law. Whenever directed by the Federal Farm Loan Board, said examiners shall examine the condition of any national farm loan association and report the same to the Farm Loan Commissioner. They shall examine and report the condition of every Federal land bank and joint stock land bank at least twice each year.

Said examiners shall receive salaries to be fixed by the Federal Farm Loan Board. [39 Stat. L. 381.]

Dissolution and Appointment of Receivers.

SEC. 29. That upon receiving satisfactory evidence that any national farm loan association has failed to meet its outstanding obligations of any description the Federal Farm Loan Board may forthwith declare such association insolvent and appoint a receiver and require of him such bond and security as it deems proper: *Provided*, That no national farm loan association shall be declared insolvent by said board until the total amount of defaults of current interest and amortization installments on loans indorsed by national farm loan associations shall amount to at least \$150,000 in the Federal land bank district, unless such association shall have been in default for a period of two years. Such receiver, under the direction of the Federal Farm Loan Board, shall take possession of the books, records, and assets of every description of such association, collect all debts, dues, and claims belonging to it, and, with the approval of the Federal Farm Loan Board, or upon the order of a court of record of competent jurisdiction, may sell or compound all bad or doubtful debts, and, on a like approval or order, may sell all the real and personal property of

such association, on such terms as the Federal Farm Loan Board or said court shall direct.

Such receivers shall pay over all money so collected to the Treasurer of the United States, subject to the order of the Federal Farm Loan Board, and also make report to said board of all his acts and proceedings. The Secretary of the Treasury shall have authority to deposit at interest any money so received.

Upon default of any obligation, Federal land banks and joint stock land banks may be declared insolvent and placed in the hands of a receiver by the Federal Farm Loan Board, and proceedings shall thereupon be had in accordance with the provisions of this section regarding national farm loan associations.

If any national farm loan association shall be declared insolvent and a receiver shall be appointed therefor by the Federal Farm Loan Board, the stock held by it in the Federal land bank of its district shall be canceled without impairment of its liability and all payments on such stock, with accrued dividends, if any, since the date of the last dividend shall be first applied to all debts of the insolvent farm loan association to the Federal land bank and the balance, if any, shall be paid to the receiver of said farm loan association: *Provided*, That in estimating said debts contingent liabilities incurred by national farm loan associations under the provisions of this Act on account of default of principal or interest of indorsed mortgages shall be estimated and included as a debt, and said contingent liabilities shall be determined by agreement between the receiver and the Federal land bank of the district, subject to the approval of the Federal Farm Loan Board, and if said receiver and said land bank can not agree, then by the decision of the Farm Loan Commissioner, and the amount thus ascertained shall be deducted in accordance with the provisions of this section from the amount otherwise due said national farm loan association for said canceled stock. Whenever the capital stock of a Federal land bank shall be reduced, the board of directors shall cause to be executed a certificate to the Federal Farm Loan Board, showing such reduction of capital stock, and, if said reduction shall be due to the insolvency of a national farm loan association, the amount repaid to such association.

No national farm loan association, Federal land bank or joint stock land bank shall go into voluntary liquidation without the written consent of the Federal Farm Loan Board, but national farm loan associations may consolidate under rules and regulations promulgated by the Federal Farm Loan Board. [39 Stat. L. 381.]

State Legislation.

SEC. 30. That it shall be the duty of the Farm Loan Commissioner to make examination of the laws of every State of the United States and to inform the Federal Farm Loan Board as rapidly as may be whether in his judgment the laws of each State relating to the conveying and recording of land titles, and the foreclosure of mortgages or other instruments securing loans, as well as providing homestead and other exemptions and granting the power to waive such exemptions as respects first mortgages, are such as to assure the holder thereof adequate safeguards against loss in the event of default on loans secured by any such mortgages.

Pending the making of such examination in the case of any State, the Federal Farm Loan Board may declare first mortgages on farm lands situated within such State ineligible as the basis for an issue of farm loan bonds; and if said examination shall show that the laws of any such State afford insufficient protection to the holder of first mortgages of the kinds provided in this Act, said Federal Farm Loan Board may declare said first mortgages on land situated in such State ineligible during the continuance of the laws in question. In making his examination of the laws of the several States and forming his conclusions thereon said Farm Loan Commissioner may call upon the office of the Attorney General of the United States for any needed legal advice or assistance, or may employ special counsel in any State where he considers such action necessary.

At the request of the Executive of any State the Federal Farm Loan Board shall prepare a statement setting forth in what respects the requirements of said board can not be complied with under the existing laws of such State. [39 Stat. L. 382.]

Penalties.

SEC. 31. That any applicant for a loan under this Act who shall knowingly make any false statement in his application for such loan, and any member of a loan committee or any appraiser provided for in this Act who shall willfully overvalue any land offered as security for loans under this Act, shall be punished by a fine of not exceeding \$5,000, or by imprisonment not exceeding one year, or both. Any examiner appointed under this Act who shall accept a loan or gratuity from any land bank or national farm loan association examined by him, or from any person connected with any such bank or association in any capacity, shall be punished by a fine of not exceeding \$5,000, or by imprisonment not exceeding one year, or both, and may be fined a further sum equal to the money so loaned or gratuity given, and shall forever thereafter be disqualified from holding office as an examiner under the provisions of this Act. No examiner, while holding such office, shall perform any other service for compensation for any bank or banking or loan association, or for any person connected therewith in any capacity.

Any person who shall falsely make, forge, or counterfeit, or cause or procure to be falsely made, forged, or counterfeited, or willingly aid or assist in falsely making, forging, or counterfeiting any bond, coupon, or paper in imitation of, or purporting to be in imitation of, the bonds or coupons issued by any land bank or national farm loan association, now or hereafter authorized and acting under the laws of the United States; or any person who shall pass, utter, or publish, or attempt to pass, utter, or publish any false, forged, or counterfeited bond, coupon, or paper purporting to be issued by any such bank or association, knowing the same to be falsely made, forged, or counterfeited; or whoever shall falsely alter, or cause or procure to be falsely altered, or shall willingly aid or assist in falsely altering any such bond, coupon, or paper, or shall pass, utter, or publish as true any falsely altered or spurious bond, coupon, or paper issued, or purporting to have been issued, by any such bank or association, knowing the same to be falsely altered or spurious, shall be punished by a fine of not exceeding \$5,000 or by imprisonment not exceeding five years, or both.

Other than the usual salary or director's fee paid to any officer, director, or employee of a national farm loan association, a Federal land bank, or a joint stock land bank, and other than a reasonable fee paid by such association or bank to any officer, director, attorney, or employee for services rendered, no officer, director, attorney, or employee of an association or bank organized under this Act shall be a beneficiary of or receive, directly or indirectly, any fee, commission, gift, or other consideration for or in connection with any transaction or business of such association or bank. No land bank or national farm loan association organized under this Act shall charge or receive any fee, commission, bonus, gift, or other consideration not herein specifically authorized. No examiner, public or private, shall disclose the names of borrowers to other than the proper officers of a national farm loan association or land bank without first having obtained express permission in writing from the Farm Loan Commissioner or from the board of directors of such association or bank, except when ordered to do so by a court of competent jurisdiction or by direction of the Congress of the United States, or of either House thereof, or any committee of Congress or of either House duly authorized. Any person violating any provision of this paragraph shall be punished by a fine of not exceeding \$5,000 or by imprisonment not exceeding one year, or both.

Any person connected in any capacity with any national farm loan association, Federal land bank, or joint stock land bank, who embezzles, abstracts, or willfully misapplies any moneys, funds, or credits thereof, or who without authority from the directors draws any order, assigns any note, bond, draft, mortgage, judgment, or decree thereof, or who makes any false entry in any book, report, or statement of such association or land bank with intent in either case to defraud such institution or any other company, body politic or corporate, or any individual person, or to deceive any officer of a national farm loan association or land bank or any agent appointed to examine into the affairs of any such association or bank, and every person who with like intent aids or abets any officer, clerk, or agent in any violation of this section, shall be punished by a fine of not exceeding \$5,000 or by imprisonment not exceeding five years, or both.

Any person who shall deceive, defraud, or impose upon, or who shall attempt to deceive, defraud, or impose upon, any person, firm, or corporation by making any false pretense or representation regarding the character, issue, security, or terms of any farm loan bond, or coupon, issued under the terms of this Act; or by falsely pretending or representing that any farm loan bond, or coupon, issued under the terms of this Act by one class of land banks is a farm loan bond, or coupon, issued by another class of banks; or by falsely pretending or representing that any farm loan bond, or coupon, issued under the terms of this Act, or anything contained in said farm loan bond, or coupon, is anything other than, or different from, what it purports to be on the face of said bond or coupon, shall be fined not exceeding \$500 or imprisoned not exceeding one year, or both.

The Secretary of the Treasury is hereby authorized to direct and use the Secret Service Division of the Treasury Department to detect, arrest, and deliver into custody of the United States marshal having jurisdiction, any person or persons violating any of the provisions of this section. [39 Stat. L. 382.]

Government Deposits.

Sec. 32. That the Secretary of the Treasury is authorized, in his discretion, upon the request of the Federal Farm Loan Board, to make deposits for the temporary use of any Federal land bank, out of any money in the Treasury not otherwise appropriated. Such Federal land bank shall issue to the Secretary of the Treasury a certificate of indebtedness for any such deposit, bearing a rate of interest not to exceed the current rate charged for other Government deposits, to be secured by farm loan bonds or other collateral, to the satisfaction of the Secretary of the Treasury. Any such certificate shall be redeemed and paid by such land bank at the discretion of the Secretary of the Treasury. The aggregate of all sums so deposited by the Secretary of the Treasury shall not exceed the sum of \$6,000,000 at any one time.

The Secretary of the Treasury is further authorized, in his discretion, upon the request of the Federal Farm Loan Board, from time to time during the fiscal years ending June thirtieth, nineteen hundred and eighteen, and June thirtieth, nineteen hundred and nineteen, respectively, to purchase at par and accrued interest with any funds in the Treasury not otherwise appropriated, from any Federal land bank, farm loan bonds issued by such bank.

Such purchases shall not exceed the sum of \$100,000,000 in either of such fiscal years. Any Federal land bank may at any time repurchase at par and accrued interest for the purpose of redemption or resale any bonds so purchased from it and held in the Treasury.

The bonds of any Federal land bank so purchased by the Secretary of the Treasury, and held in the Treasury under the provisions of this amendment one year after the termination of the pending war, shall upon thirty days' notice from the Secretary of the Treasury be redeemed or repurchased by such bank at par and accrued interest.

The temporary organization of any Federal land bank as provided in section four of said Federal Farm Loan Act shall be continued so long as any farm loan bonds purchased from it under the provisions of this amendment shall be held by the Treasury, and until the subscriptions to stock in such bank by national farm loan associations shall equal the amount of stock held in such bank by the Government of the United States. [39 Stat. L. 384, as amended by — Stat. L.—.]

This section was amended to read as here given by the Act of Jan. 18, 1918, ch. —, § 1, the amendment consisting of the addition of the last four paragraphs relating to the purchase of bonds.

Section 2 of said amendatory Act was as follows:

"SEC. 2. That all Acts or parts of Acts inconsistent with this Act are hereby repealed, and this Act shall take effect upon its passage. The right to amend, alter, or repeal this Act is hereby expressly reserved."

Organization Expenses.

Sec. 33. That the sum of \$100,000, or so much thereof as may be necessary, is hereby appropriated, out of any money in the Treasury not otherwise appropriated, to be expended under the direction of the Federal Farm Loan Board, for the purpose of carrying into effect the provisions of this Act, including the rent and equipment of necessary offices. [39 Stat. L. 384.]

Limitation of Court Decisions.

SEC. 34. That if any clause, sentence, paragraph, or part of this Act shall for any reason be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder of this Act, but shall be confined in its operation to the clause, sentence, paragraph, or part thereof directly involved in the controversy in which such judgment shall have been rendered. [39 Stat. L. 384.]

Repealing Clause.

SEC. 35. That all Acts or parts of Acts inconsistent with this Act are hereby repealed, and this Act shall take effect upon its passage. The right to amend, alter, or repeal this Act is hereby expressly reserved. [39 Stat. L. 384.]

[SEC. 1.] [Federal Farm Loan Board — estimates for appropriations.]
 * * * hereafter detailed estimates for appropriations for the Federal Farm Loan Board shall be annually submitted to Congress. [39 Stat. L. 803.]

This is from the Deficiency Appropriation Act of Sept. 8, 1916, ch. 464.

IV. MISCELLANEOUS PROVISIONS

[Vehicles and motor boats for field work — report of expenditures.]
 * * * That not to exceed \$60,000 of the lump-sum appropriations herein made for the Department of Agriculture shall be available for the purchase, maintenance, repair, and operation of motor-propelled and horse-drawn passenger-carrying vehicles and motor boats necessary in the conduct of the field work of the Department of Agriculture outside the District of Columbia: *Provided*, That not to exceed \$10,000 of this amount shall be expended for the purchase of such vehicles and boats, and that such vehicles and boats shall be used only for official service outside the District of Columbia, but this shall not prevent the continued use for official service of motor trucks in the District of Columbia: *Provided further*, That the Secretary of Agriculture shall, on the first day of each regular session of Congress, make a report to Congress showing the amount expended under the provisions of this paragraph during the preceding fiscal year: *Provided*, That hereafter, nothing in this paragraph or in section five of the legislative, executive, and judicial appropriation Act, approved July sixteenth, nineteen hundred and fourteen (Thirty-eighth Statutes at Large, page five hundred and eight), shall be construed to apply to the hire of motor-propelled and horse-drawn passenger-carrying vehicles and motor boats necessary in the conduct of the field work of the department, or to the maintenance, repair, or operation of vehicles so hired. [39 Stat. L. 491.]

This and the three paragraphs of the text following are from the Agricultural Appropriation Act of Aug. 11, 1916, ch. 313.

For the Act of July 16, 1914, ch. 141, § 5, mentioned in the text, see 1916 Supp. Fed. Stat. Ann. 48; 3 Fed. Stat. Ann. (2d ed.) 155.

[Detailed estimates for executive officers, clerks, and employees below the grade of clerk.] The Secretary of Agriculture for the fiscal year nineteen hundred and eighteen, and annually thereafter, shall transmit to the Secretary of the Treasury for submission to Congress in the Book of Estimates detailed estimates for all executive officers, clerks, and employees below the grade of clerk, indicating the salary or compensation of each, necessary to be employed by the various bureaus, offices, and divisions of the Department of Agriculture, and shall include with such estimates a statement of all executive officers, clerks, and employees below the grade of clerk who may have been employed during the last completed fiscal year on any lump fund appropriation for the department and the salary or compensation of each. [39 Stat. L. 492.]

See the note to the preceding paragraph of this Act.

[Reports to Congress of investigations, etc.] * * * The Secretary of Agriculture is directed hereafter to submit to Congress annually a statement showing investigations and other services conducted by the Department of Agriculture which have been completed and which can be discontinued. [39 Stat. L. 492.]

See the note to the first paragraph of this Act, *supra*, p. 42.

[Detailed statement of expenditures — former act amended.] * * * That section two of the agricultural appropriation Act of March third, eighteen hundred and eighty-five (Twenty-third Statutes at Large, page three hundred and fifty-three), be, and the same hereby is, amended so as to read as follows, effective on and after June eighteenth, nineteen hundred and sixteen:

“ SEC. 2. That hereafter in addition to the proper vouchers and accounts for the sums appropriated for the Department of Agriculture to be furnished to the accounting officers of the Treasury, the Secretary of Agriculture shall, at the commencement of each regular session, present to Congress a detailed statement of the expenditure of all appropriations for said department for the last preceding fiscal year.” [39 Stat. L. 492.]

See the note to the first paragraph of this Act, *supra*, p. 42.

For the Act of March 3, 1885, ch. 338, § 2, amended by the text, see 1 Fed. Stat. Ann. 7; 1 Fed. Stat. Ann. (2d ed.) 210.

[Photographic films — sale or rental.] * * * That the Secretary of Agriculture is authorized, under such rules and regulations and subject to such conditions as he may prescribe, to loan, rent, or sell copies of films: *Provided*, That in the sale or rental of films educational institutions or associations for agricultural education not organized for profit shall have preference; all moneys received from such rentals or sales to be covered into the Treasury of the United States as miscellaneous receipts. [39 Stat. L. 1157.]

This and the following paragraph of the text are from the Agricultural Appropriation Act of March 4, 1917, ch. 179.

[Passenger vehicles — exchange — report.] * * * That hereafter the Secretary of Agriculture may exchange motor-propelled and horse-drawn passenger-carrying vehicles in part payment for new motor-propelled or horse-drawn passenger-carrying vehicles authorized to be purchased by him, to be used for the same purposes as those proposed to be exchanged, and shall, on the first day of each regular session of Congress, make a report to Congress for the fiscal year last closed showing, as to each exchange hereunder, the make of the vehicle, the period of its use, the allowance therefor, and the vehicle, make thereof, and price, including exchange value, paid, or to be paid, for each vehicle procured through such exchange. [39 Stat. L. 1167.]

See the note to the preceding paragraph of the text.

An Act To provide further for the national security and defense by stimulating agriculture and facilitating the distribution of agricultural products.

[Act of Aug. 10, 1917, ch. —, — Stat. L. —.]

[SEC. 1.] [Provisions for national security and defense — stimulating agriculture — facilitating distribution of agricultural products.] That for the purpose of more effectually providing for the national security and defense and carrying on the war with Germany by gathering authoritative information concerning the food supply, by increasing production, by preventing waste of the food supply, by regulating the distribution thereof, and by such other means and methods as are hereinafter provided, the powers, authorities, duties, obligations, and prohibitions hereinafter set forth are conferred and prescribed. [— Stat. L. —.]

Section 9 of this Act is given in **ANIMALS**, *post*, p. 61.

Section 10 of this Act is given in **PUBLIC LANDS**, *post*.

Section 11 of this Act is given in **WATERS**, *post*.

SEC. 2. [Authority of Secretary of Agriculture — investigation relative to production, etc., of food.] That the Secretary of Agriculture, with the approval of the President, is authorized to investigate and ascertain the demand for, the supply, consumption, costs, and prices of, and the basic facts relating to the ownership, production, transportation, manufacture, storage, and distribution of, foods, food materials, feeds, seeds, fertilizers, agricultural implements and machinery, and any article required in connection with the production, distribution, or utilization of food. It shall be the duty of any person, when requested by the Secretary of Agriculture, or any agent acting under his instructions, to answer correctly, to the best of his knowledge, under oath or otherwise, all questions touching his knowledge of any matter authorized to be investigated under this section, or to produce all books, letters, papers, or documents in his possession, or under his control, relating to such matter. Any person who shall, within a reasonable time to be prescribed by the Secretary of Agriculture, not exceeding thirty days from the date of the receipt of the request, willfully

fail or refuse to answer such questions or to produce such books, letters, papers, or documents, or who shall willfully give any answer that is false or misleading, shall be guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine not exceeding \$1,000 or by imprisonment not exceeding one year, or both. [— *Stat. L.* —.]

SEC. 3. [Purchase, etc., of seeds.] That whenever the Secretary of Agriculture shall find that there is or may be a special need in any restricted area for seeds suitable for the production of food or feed crops, he is authorized to purchase, or contract with persons to grow such seeds, to store them, and to furnish them to farmers for cash, at cost, including the expense of packing and transportation. [— *Stat. L.* —.]

SEC. 4. [Co-operation with state and local authorities — rules and regulations.] That the Secretary of Agriculture is authorized to cooperate with such State and local officials, and with such public and private agencies, or persons, as he finds necessary, and to make such rules and regulations as are necessary effectively to carry out the preceding sections of this Act. [— *Stat. L.* —.]

SEC. 5. [Two additional Secretaries of Agriculture — salary.] That the President, by and with the advice and consent of the Senate, may appoint two additional Assistant Secretaries of Agriculture, who shall perform such duties as may be required by law or prescribed by the Secretary of Agriculture, and who shall each be paid a salary of \$5,000 per annum. [— *Stat. L.* —.]

SEC. 6. [Government agency in co-operation with Secretary of Agriculture.] That the President is authorized to direct any agency or organization of the Government to cooperate with the Secretary of Agriculture in carrying out the purposes of this Act and to coordinate their activities so as to avoid any preventable loss or duplication of work. [— *Stat. L.* —.]

SEC. 7. [Construction of words in Act.] That words used in this Act shall be construed to import the plural or the singular as the case demands, and the word "person," wherever used in this Act, shall include individuals, partnerships, associations, and corporations. [— *Stat. L.* —.]

SEC. 8. [Appropriations.] That for the purposes of this Act, the following sums are hereby appropriated, out of any moneys in the Treasury not otherwise appropriated, available immediately and until June thirtieth, nineteen hundred and eighteen: For the prevention, control, and eradication of the diseases and pests of live stock; the enlargement of live-stock production; and the conservation and utilization of meat, poultry, dairy, and other animal products, \$885,000.

For procuring, storing, and furnishing seeds, as authorized by section three of this Act, \$2,500,000 and this fund may be used as a revolving fund until June thirtieth, nineteen hundred and eighteen.

For the prevention, control, and eradication of insects, and plant diseases injurious to agriculture, and the conservation and utilization of plant products, \$441,000.

For increasing food production and eliminating waste and promoting conservation of food by educational and demonstrational methods, through county, district, and urban agents and others, \$4,348,400.

For gathering authoritative information in connection with the demand for, and the production, supply, distribution, and utilization of food, and otherwise carrying out the purpose of section two of this Act; extending and enlarging the market news service; and preventing waste of food in storage, in transit, or held for sale; advise concerning the market movement or distribution of perishable products; for enabling the Secretary of Agriculture to investigate and certify to shippers the condition as to soundness of fruits, vegetables and other food products, when received at such important central markets as the Secretary of Agriculture may from time to time designate and under such rules and regulations as he may prescribe: *Provided*, That certificates issued by the authorized agents of the department shall be received in all courts as prima facie evidence of the truth of the statements therein contained; and otherwise carrying out the purposes of this Act, \$2,522,000: *Provided further*, That the Secretary of Agriculture shall, so far as practicable, engage the services of women for the work herein provided for.

For miscellaneous items, including the salaries of Assistant Secretaries appointed under this Act; special work in crop estimating; aiding agencies in the various States in supplying farm labor; enlarging the informational work of the Department of Agriculture; and printing and distributing emergency leaflets, posters, and other publications requiring quick issue or large editions, \$650,000.

Provided, That the employment of any person under the provisions of this Act shall not exempt any such person from military service under the provisions of the selective draft law approved May eighteenth, nineteen hundred and seventeen.

It shall be the duty of the Secretary of Agriculture to submit to Congress at its regular session in December of each year a detailed report of the expenditure of all moneys herein appropriated. [— *Stat. L.* —.]

See the notes to section 1 of this Act, *supra*, p. 44.

SEC. 12. [Period of effectiveness of Act.] That the provisions of this Act shall cease to be in effect when the national emergency resulting from the existing state of war shall have passed, the date of which shall be ascertained and proclaimed by the President; but the date when this Act shall cease to be in effect shall not be later than the beginning of the next fiscal year after the termination, as ascertained by the President, of the present war between the United States and Germany.

SEC. 27. [Nitrate of soda—procurement by President.] That the President is authorized to procure, or aid in procuring, such stocks of nitrate of soda as he may determine to be necessary, and find available, for increasing agricultural production during the calendar years nineteen hundred and seventeen and eighteen, and to dispose of the same for cash at cost, including all expenses connected therewith. For carrying out the purposes

of this section, there is hereby appropriated, out of any moneys in the Treasury not otherwise appropriated, available immediately and until expended, the sum of \$10,000,000, or so much thereof as may be necessary, and the President is authorized to make such regulations, and to use such means and agencies of the Government, as, in his discretion, he may deem best. The proceeds arising from the disposition of the nitrate of soda shall go into the Treasury as miscellaneous receipts. [— *Stat. L.* —.]

This is from an Act of Aug. 10, 1917, ch. —, entitled "An Act to provide further for the national security and defense by encouraging the production, conserving the supply, and controlling the distribution of food products and fuel." For the other provisions of this Act, see the title **FOOD AND FUEL**, *post*.

The Deficiencies Appropriation Act of March 28, 1918, ch. —, § 1, — *Stat. L.* —, contained a provision as follows:

"The proceeds heretofore or hereafter received from the disposition of nitrate of soda under the appropriation of \$10,000,000 contained in section twenty-seven of the Act approved August tenth, nineteen hundred and seventeen, shall be credited to the said appropriation of \$10,000,000 and be available for the purposes authorized in the said section during the period of the existing war as defined by section twenty-four of the said Act."

[SEC. 1.] * * * [Protection of cotton culture — eradication of boll-worm.] On account of the menace to cotton culture in the United States arising from the existence of the pink boll-worm in Mexico, the Secretary of Agriculture, in order to prevent the establishment and spread of such worm in Texas and other parts of the United States, is authorized to make surveys to determine its actual distribution in Mexico; to establish, in cooperation with the States concerned, a zone or zones free from cotton culture on or near the border of any State or States adjacent to Mexico; and to cooperate with the Mexican Government or local Mexican authorities in the extermination of local infestations near the border of the United States. [— *Stat. L.* —.]

This is from the Deficiencies Appropriation Act of Oct. 6, 1917, ch. —.

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Joint Resolution Authorizing the Secretary of Commerce to sell skins taken from fur seals killed on the Pribilof Islands for food purposes.

[Res. of June 22, 1916, ch. 171, 39 Stat. L. 236.]

[Sealskins — sale by Secretary of Commerce.] That the Secretary of Commerce be, and he is hereby, authorized to sell all skins taken from seals killed on the Pribilof Islands for food purposes under section eleven of the Act of August twenty-fourth, nineteen hundred and twelve, in such market at such times and in such manner as he may deem most advantageous, and the proceeds of such sale or sales shall be paid into the Treasury of the United States. **[39 Stat. L. 236.]**

For the Act of Aug. 24, 1912, ch. 373, § 11, mentioned in the text, see 1914 Supp. Fed. Stat. Ann. 17; 1 Fed. Stat. Ann. (2d ed.) 349.

An Act To amend the United States homestead law in its application to Alaska, and for other purposes.

[Act of July 8, 1916, ch. 228, 39 Stat. L. 352.]

SECTION 1. [Homestead entry — area of claims.] That every person who is qualified under existing laws to make homestead entry of the public lands of the United States who has settled upon or who shall hereafter settle upon any of the public lands of the United States situated in the District of Alaska, whether surveyed or unsurveyed, with the intention of claiming the same under the homestead laws, shall, subject to the provisions and limitations of the Act approved March third, nineteen hundred and three, chapter one thousand and two, United States Statutes at Large, page one thousand and twenty-eight, be entitled to enter one hundred and sixty acres or a less quantity of unappropriated public land in said District of Alaska, and no more, and a former homestead entry in any other State or Territory shall not be a bar to a homestead entry in Alaska: *Provided*, That nothing herein contained shall be construed to limit or curtail the area of any homestead claim heretofore lawfully initiated. **[39 Stat. L. 352, as amended by — Stat. L. —.]**

For the Act of March 3, 1903, ch. 1002, mentioned in this section, see 10 Fed. Stat. Ann. 25; 1 Fed. Stat. Ann. (2d ed.) 325.

This Act was amended to read as here given by the Act of June 28, 1918, ch. —, entitled "An Act To amend the homestead law in its application to Alaska, and for other purposes." As originally enacted it was as follows:

"[SEC. 1.] [*Homestead entry — area of claim.*] That every person who is qualified under existing laws to make homestead entry of the public lands of the United States who has settled upon or who shall hereafter settle upon any of the public lands of the United States situated in the District of Alaska, whether surveyed or unsurveyed, with the intention of claiming the same under the homestead laws, shall, subject to the provisions and limitations of the Act approved March third, nineteen hundred and three, chapter one thousand and two, United States Statutes at Large, page one thousand and twenty-eight, be entitled to enter one hundred and sixty acres or a less quantity of unappropriated public land in said District of Alaska, and no more, and a former homestead entry in any other State or Territory shall not be a bar to a homestead entry in Alaska: *Provided*, That nothing herein contained shall be construed to limit or curtail the area of any homestead claim heretofore lawfully initiated. [39 Stat. L. 352.]

"SEC. 2. [*Lands excepted from homestead settlement.*] That there shall be excepted from homestead settlement and entry under this Act the lands in Annette and Pribiloff Islands, the islands leased or occupied for the propagation of foxes, and such other lands as have been or may be reserved or withdrawn from settlement or entry. [39 Stat. L. 352.]"

SEC. 2. [*Absence of system of public surveys — procedure.*] That if the system of public surveys has not been extended over the land included in a homestead entry, the entryman may, after due compliance with the terms of the homestead law in the matter of residence, cultivation, and improvement, submit to the register and receiver a showing as to such compliance, duly corroborated by two witnesses, and if such evidence satisfactorily shows that the homesteader is in a position to submit acceptable final proof the surveyor general of the Territory will be so advised and will, not later than the next succeeding surveying season, issue proper instructions for the survey of the land so entered, without expense to the entryman, who may thereafter submit final proof as in similar entries of surveyed lands. So far as practicable, such survey shall follow the general system of public-land surveys, and the entryman shall conform his boundaries thereto: *Provided*, That nothing herein shall prevent the homesteader from securing earlier action on his entry by a special survey at his own expense, if he so elects. [— Stat. L. —.]

SEC. 3. [*Lands excepted from homestead settlement.*] That there shall be excepted from homestead settlement and entry under this Act the lands in Annette and Pribiloff Islands, the islands leased or occupied for the propagation of foxes, and such other lands as have been, or may be, reserved or withdrawn from settlement or entry. [— Stat. L. —.]

An Act To authorize the Legislature of Alaska to establish and maintain schools, and for other purposes.

[Act of March 3, 1917, ch. 167, 39 Stat. L. 1131.]

[*Schools — establishment — power of legislature.*] That the Legislature of Alaska is hereby empowered to establish and maintain schools for white and colored children and children of mixed blood who lead a civilized

life in said Territory and to make appropriations of Territorial funds for that purpose; and all laws or parts of laws in conflict with this Act are to that extent repealed. [— Stat. L. —.]

[SEC. 1.] * * * [Government railroad — sale of lots — proceeds.] That until June thirtieth, nineteen hundred and eighteen, not to exceed fifty per centum of the moneys received from the sale of lots or tracts within any town site or town sites heretofore or hereafter sold pursuant to the provisions of the Act of March twelfth, nineteen hundred and fourteen, entitled "An Act to authorize the President of the United States to locate, construct, and operate railroads in the Territory of Alaska, and for other purposes," may, in the discretion of the Secretary of the Interior, be set apart and expended within the respective town sites in which such lots or tracts are sold, for the purpose of preparing the land for occupancy, the construction, installation, and maintenance of public utilities and improvements, and the construction of public school buildings, under such terms and conditions as the Secretary of the Interior may prescribe, and the moneys so set apart and designated are appropriated for the purpose of carrying these provisions into effect: *Provided*, That such moneys as may have been heretofore or may hereafter be expended for such purposes under and by authority of the Alaskan Engineering Commission from the funds at its disposal shall be reimbursed from the amount designated for the purposes herein provided: *Provided further*, That a report of the expenditures hereunder shall be made to Congress at the beginning of each regular session. [— Stat. L. —.]

This is from the Deficiencies Appropriation Act of April 17, 1917, ch. —.
For the Act of March 12, 1914, ch. 37, mentioned in the text, see 1916 Supp. Fed. Stat. Ann. 7; 1 Fed. Stat. Ann. (2d ed.) 336.

An Act To prohibit the manufacture or sale of alcoholic liquors in the Territory of Alaska, and for other purposes.

[Act of Feb. 14, 1917, ch. 53, 39 Stat. L. 903.]

[SEC. 1.] [Intoxicating liquors — sale, etc., prohibited — definitions — penalties for violation.] That on and after the first day of January, anno Domini nineteen hundred and eighteen, it shall be unlawful for any person, house, association, firm, company, club, or corporation, his, its, or their agents, officers, clerks, or servants, to manufacture, sell, give, or otherwise dispose of any intoxicating liquor or alcohol of any kind in the Territory of Alaska, or to have in his or its possession or to transport any intoxicating liquor or alcohol in the Territory of Alaska unless the same was procured and is so possessed and transported as hereinafter provided.

Whenever the term "liquor," "intoxicating liquor," or "intoxicating liquors" is used in this Act it shall be deemed to include whisky, brandy, rum, gin, wine, ale, porter, beer, cordials, hard or fermented cider, alcoholic bitters, ethyl alcohol, and all malt liquors, including all alcoholic compounds classed by the United States Internal Revenue Bureau as "compound liquors": *Provided*, That this Act shall not apply to methyl or wood alcohol.

That any person or persons, or any house, company, association, club, or corporation, his, its, or their agents, officers, clerks, or servants, who shall, directly or indirectly, violate the provisions of this section shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not more than \$1,000 or shall be imprisoned for a period of not more than one year, or by both such fine and imprisonment. [39 Stat. L. 903.]

SEC. 2. [Pharmacists — permits — necessity.] That before a pharmacist shall be authorized to transport pure alcohol for scientific, artistic, or mechanical purposes or for compounding or preparing medicines, as provided by this Act, he shall procure a permit for that purpose from the judge of the district court in the division where the applicant resides. [39 Stat. L. 903.]

SEC. 3. [Pharmacists — permits — prerequisites to obtaining.] That to procure such permit a pharmacist shall make and file with the clerk of the said district court a statement in writing, under oath, stating that he desires to transport pure alcohol for scientific, artistic, or mechanical purposes or for compounding, preparing, or preserving medicines only, as provided by this Act, and giving his name, the location of his place of business, a statement that he is a licensed pharmacist, that he is regularly engaged in the practice of his profession at the location named, and that he will not violate the provisions of this Act. [39 Stat. L. 904.]

SEC. 4. [Pharmacists — permits — form.] That if the judge of the district court of any division in Alaska is satisfied of the good faith of the applicant he shall issue to such pharmacist a permit to transport pure alcohol for compounding, preparing, or preserving medicines or for scientific, artistic, or mechanical purposes. Such permit shall be substantially in the following form :

“ Permit to pharmacists to transport pure alcohol for compounding, preparing, and preserving medicines only or for scientific, artistic, or mechanical purposes.

“ District court, _____ division, territory of Alaska, ss.

“ _____, a pharmacist, residing at _____, is hereby permitted to transport pure alcohol for compounding, preparing, and preserving medicines only or for scientific, artistic, or mechanical purposes. This permit can only be used for one shipment and will be void after six months from the date of issue.

“ By order of the district court aforesaid.

“ Dated this _____ day of _____, nineteen hundred and _____.

“ _____,
“ Judge of the district court.”

[39 Stat. L. 904.]

SEC. 5. [Pharmacists — permits — issuance — record.] That said permit mentioned in section four hereof shall be issued upon forms supplied by the clerk of the district court and shall contain the permit, a copy of the application for permit, and a copy of the provisions of section six of this Act, and shall be issued under the seal of the said court and shall be void for transportation purposes after six months from the date of issuance.

The clerk of said district court shall keep in a separate book provided for that purpose a record of permits issued under this Act, wherein shall be entered the date and the number thereof, the person to whom issued, and the purpose for which issued. [39 Stat. L. 904.]

SEC. 6. [Pharmacists — permits — placing on packages, etc.— cancellation.] That said permit shall be attached to and remain affixed in a conspicuous place upon any package or parcel containing pure alcohol imported into or shipped in the Territory of Alaska, and when so affixed shall authorize any common carrier or any person operating a boat or vehicle for the transportation of goods, wares, or merchandise within the Territory of Alaska to transport, ship, or carry such pure alcohol. Any person so transporting such alcohol shall, before the delivery of such package or parcel, cancel said permit and so deface the same that it can not be used again. [39 Stat. L. 904.]

SEC. 7. [Shipments — regulations affecting — common carriers — consignees— fictitious names.] That all express companies, railroad companies, public or private carriers are hereby required to keep a separate book in which shall be entered, immediately upon receipt thereof, the name of the person to whom pure alcohol is shipped, from what city or town and State the same was shipped, and the name of the shipper, the amount and kind received, the date when received, the date when delivered, and to whom delivered, after which record there shall be a blank space in which the consignee shall be required to sign his own name, in ink, before such pure alcohol is delivered to such consignee, which book shall be open to the inspection of the public at any time during business hours of the company and shall not be removed from the place where the same is required to be kept. A copy of entries upon any such record herein provided to be kept, when certified to by the agent of any express or railroad company or any public or private carrier in charge of the same, shall constitute prima facie evidence of the facts therein stated in any court of the Territory.

It shall be unlawful for any person, house, association, firm, company, club, or corporation, his, its, or their agents, officers, clerks, or servants, to ship alcohol or intoxicating liquor to a false or fictitious name or person, or any person to receive or receipt for alcohol or intoxicating liquor in a false or fictitious name. [39 Stat. L. 904.]

SEC. 8. [Shipments of wine for sacramental purposes — certificate.] That any common carrier or any person operating a boat or vehicle for the transportation of goods, wares, or merchandise may accept for transportation and may transport to any place within the Territory of Alaska shipments of wine for sacramental purposes when there is attached to such shipment a certificate in substantially the following form:

" I (or we) certify that this package contains only _____ (amount) of _____ (wine), which has been ordered by _____ who represents himself to be a duly authorized and officiating priest or minister of the _____ church at _____, and that said wine is desired for sacramental purposes only.

" _____ "

(Signature of Shipper.)

[39 Stat. L. 905.]

SEC. 9. [Shipments of wine for sacramental purposes — delivery — records.] That whenever a shipment of wines for sacramental purposes shall have been transported for delivery within the Territory of Alaska the delivering agent of the transportation company must refuse to deliver the same unless it is accompanied by the certificate prescribed in section eight of this Act, and then only to the person to whom the same is addressed or upon his written order. The transportation company must keep a record of all shipments and deliveries of wines for sacramental purposes and must preserve for a period of one year after their receipt all certificates accompanying such shipments and all written orders upon which deliveries may be made. Such records must be open to the inspection of the public at any time during office hours. [39 Stat. L. 905.]

SEC. 10. [Alcohol for scientific, etc., purposes — permit — procurement.] That any person who shall desire to purchase pure alcohol for scientific, artistic, or mechanical purposes shall apply to the district court aforesaid for a permit for that purpose. To procure such permit he shall make and file with the clerk of the district court a statement in writing, under oath, stating that he desires to purchase pure alcohol for scientific, artistic, or mechanical purposes as provided by this Act, and giving his name and residence and the place at which such pure alcohol is to be used. [39 Stat. L. 905.]

SEC. 11. [Alcohol for scientific, etc., purposes — permit — form.] That if the judge of said district court is satisfied of the good faith of the applicant, he shall issue to said applicant a permit to purchase a reasonable amount of pure alcohol for scientific, artistic, or mechanical purposes. The original of said permit shall have attached thereto a duplicate copy, and each shall be numbered with the same number and be in substantially the following form:

“ District Court, ——— Division, Territory of Alaska, ss.

“ ———, residing at ———, is hereby permitted to purchase pure alcohol in the amount of ——— (here insert quantity), to be used for scientific, artistic, or mechanical purposes. This permit can only be used for one purchase, and the copy thereof attached hereto shall be conspicuously pasted upon the package containing said alcohol, and this permit to purchase shall be void after ninety days from the date hereof.

“ By order of the district court aforesaid.

“ Dated this ——— day of ———, nineteen hundred and ———.

“ ———,
“ Judge of the District Court.”

[39 Stat. L. 905.]

SEC. 12. [Alcohol for scientific, etc., purposes — permit — effect — cancellation — copy on receptacle.] That the permit mentioned in section eleven shall authorize the applicant to purchase and any pharmacist to sell and deliver to him the quantity named in the said permit. The permit shall be canceled, kept, and retained on file for at least one year by the pharmacist so selling said pure alcohol, and the copy of said permit shall be, by the pharmacist, conspicuously pasted upon the receptacle containing said alco-

hol, and shall so remain upon said receptacle so long as the same shall contain alcohol. Said permit and copy shall only authorize one purchase and sale. It shall be unlawful for any pharmacist to sell pure alcohol without the permit herein specified, or for any person to keep or have in his possession any pure alcohol unless the receptacle containing the same shall be distinctly labeled with the copy of the permit authorizing the purchase of the same. [39 Stat. L. 906.]

SEC. 13. [Premises, vehicles, etc.— use for manufacture or transportation.] That it shall be unlawful for any person owning, leasing, or occupying or in possession or control of any premises, building, vehicle, car, or boat to knowingly permit thereon or therein the manufacture, transportation, disposal, or the keeping of intoxicating liquor with intent to manufacture, transport, or dispose of the same in violation of the provisions of this Act. [39 Stat. L. 906.]

SEC. 14. [Importing, etc., of liquors — prohibition.] That it shall be unlawful for any person to import, ship, sell, transport, deliver, receive, or have in his possession any intoxicating liquors, except as in this Act provided. [39 Stat. L. 906.]

SEC. 15. [Public drinking, intoxication, etc., as misdemeanor.] That any person who shall in or upon any passenger coach, street car, boat, or in or upon any other vehicle commonly used for the transportation of passengers, or in or about any depot, platform, or waiting room drink any intoxicating liquor of any kind, or any person who shall be drunk or intoxicated in any public or private road or street, or in any passenger coach, street car, or any public place or building, or at any public gathering, or any person who shall be drunk or intoxicated and shall disturb the peace of any person, shall be guilty of a misdemeanor. [39 Stat. L. 906.]

SEC. 16. [Social clubs — liability of members, etc.— competency of witnesses — keeping and giving away liquors.] That every person who shall directly or indirectly keep or maintain by himself or by associating with others, or who shall in any manner aid, assist, or abet in keeping or maintaining any clubhouse, or other place in which alcoholic liquor is received or kept for the purpose of use, gift, barter, or sale, or for distribution or division among the members of any club or association by any means whatsoever, or who shall maintain what is commonly known as the "locker system" or other device for evading the provisions of this Act, and every person who shall use, barter, sell, give away, or assist or abet in bartering, selling, or giving away any liquors so received or kept, shall be deemed guilty of a misdemeanor and upon conviction thereof be subject to the penalties prescribed in section one of this Act; and in all cases the members, shareholders, associates, or employees in any club or association mentioned in this section shall be competent witnesses to prove any violations of the provisions of this section of this Act, or of any fact tending thereto; and no person shall be excused from testifying as to any offense committed by another against any of the provisions of this Act by reason of his testimony tending to criminate himself, but the testimony given by such person shall in no case be used against him.

The keeping or giving away of alcoholic liquors, or any schemes or devices whatever, to evade the provisions of this Act, shall be deemed unlawful within the provisions of this Act. [39 Stat. L. 906.]

SEC. 17. [Information to district attorney — search warrants — issuance — articles seized as evidence.] That if one or more persons who are competent witnesses shall charge, on oath or affirmation, before the district attorney or any of his deputies duly authorized to act for him, presenting that any person, company, copartnership, association, club, or corporation has or have violated or is violating the provisions of this Act by manufacturing, storing, or depositing, offering for sale, keeping for sale or use, trafficking in, bartering, exchanging for goods, giving away, or otherwise furnishing alcoholic liquor, shall request said district attorney or any of his assistants duly authorized to act for him to cause to be issued a warrant, said attorney or any of his assistants shall cause to be issued such warrant, in which warrant the room, house, building, or other place in which the violation is alleged to have occurred or is occurring shall be specifically described; and said warrant shall be placed in the hands of the marshal, his deputy, or any town marshal or policeman in any town in which the room, house, building, or other place above referred to is located, commanding him to at once thoroughly search said described room, house, building, or other place, and the appurtenances thereof; and if any such be found, to take into his possession and safely keep, to be produced as evidence when required, all alcoholic liquors and all the means of dispensing the same, also all the paraphernalia or part of the paraphernalia of a barroom or other alcoholic liquor establishment, and any United States internal-revenue tax receipt or certificate for the manufacture or sale of alcoholic liquor, effective for the period of time covering the alleged offense, and forthwith report all the facts to the district attorney or his deputy, and such alcoholic liquor or the means for dispensing same, or the paraphernalia of a barroom or other alcoholic liquor establishment, or any United States internal-revenue tax receipt or certificate for the sale of alcoholic liquor, effective as aforesaid, shall be prima facie evidence of the violation of the provisions of this Act. [39 Stat. L. 906.]

SEC. 18. [Evidence — sufficiency to convict — warrants, etc. — specifying kind of liquor.] That it shall not be necessary, in order to convict any person, company, house, association, copartnership, club, or corporation, his, its, or their agents, officers, clerks, or servants of manufacturing importing or selling alcoholic liquors, to prove the actual manufacture, importing, sale, delivery of, or payment for any alcoholic liquors, but the evidence of having or keeping them in hand, stored or deposited, taking orders for, or offering to sell or barter, or exchanging them for goods or merchandise, or giving them away, shall be sufficient to convict; nor shall it be necessary in a warrant, information, or indictment to specify the particular kind of alcoholic liquor which is made the subject of a charge of violation of this Act. [39 Stat. L. 907.]

SEC. 19. [Common and public nuisances — what are — abatement — punishment of persons maintaining.] That all houses, boats, boathouses, buildings, clubrooms and places of every description, including drug stores,

where alcoholic liquors are manufactured, stored, sold, or vended, given away, or furnished contrary to law, including those in which clubs, orders, or associations sell, barter, give away, distribute, or dispense intoxicating liquors to their members by any means or device whatever, as provided in this Act, shall be held, taken, and deemed common and public nuisances. And any person who shall maintain, or shall aid or abet, or knowingly be associated with others, in maintaining such common and public nuisance, shall be guilty of a misdemeanor and upon conviction thereof shall be subject to the penalties prescribed in section one of this Act, and judgment shall be given that such house, boat, building, or other place, or any room therein, be abated, or closed up as a place for the sale or keeping of such liquor contrary to law, as the court may determine. [39 Stat. L. 907.]

SEC. 20. [Common nuisances — abatement — injunction — bond — contempt.] That any United States District Attorney for the Territory of Alaska may maintain an action in equity in the name of the United States to abate and perpetually enjoin such a nuisance as defined in the preceding section. No bond shall be required. Any person violating the terms of any injunction granted in such proceedings shall be punished for contempt by a fine of not more than \$500 or by imprisonment in the Federal jail for not more than six months; or both such fine and imprisonment, in the discretion of the court. [39 Stat. L. 907.]

SEC. 21. [Common nuisances — conviction of tenant of premises — forfeiture of lease.] That if a tenant of a building or tenement is convicted of using such premises or any part thereof or maintaining a common nuisance, as hereinbefore defined, or of knowingly permitting such use by another, the conviction of such use shall render void the lease under which he holds and shall cause the right of possession to revert to the owner or lessor, who may, without process of law, make immediate entry upon the premises, or may avail himself of the remedy provided for the forcible detention thereof. [39 Stat. L. 907.]

SEC. 22. [Common nuisances — duty of owner, etc., of premises.] That anyone who knowingly permits any building owned or leased by him or under his control, or any part thereof, to be used in maintaining a common nuisance hereinbefore described in section nineteen of this Act, neglects to take all reasonable measures to eject therefrom the person so using the same, shall be deemed guilty of assisting in maintaining such nuisance. [39 Stat. L. 908.]

SEC. 23. [Property right in liquors — forfeiture — destruction.] That no property right of any kind shall exist in alcoholic liquors or beverages illegally manufactured, received, possessed, or stored under this Act, and in all such cases the liquors are forfeited to the United States and may be searched for and seized and ordered to be destroyed by the court after a conviction, when such liquors have been seized for use as evidence, or upon satisfactory evidence to the court presented by the district attorney that such liquors are contraband. [39 Stat. L. 908.]

SEC. 24. [Violations of Act — punishment.] That any person convicted of a violation of any of the provisions of this Act where the punishment therefor is not herein specifically provided shall be punished as provided by section one of this Act. [39 Stat. L. 908.]

SEC. 25. [Pharmacists — conviction — revocation of license.] That in case a pharmacist is convicted under the provisions of this Act the judge of the district court, in addition to the penalty provided in this Act, may, in his discretion, revoke his license to practice pharmacy, and thereafter he shall not receive a license for one year. [39 Stat. L. 908.]

SEC. 26. [Internal revenue special tax stamp or receipt — use as evidence.] That the issuance by the United States of any internal revenue special tax stamp or receipt to any person as a dealer in intoxicating liquors shall be prima facie evidence of the sale of intoxicating liquors by such person during the time the stamp or receipt is in force and effect.

A copy of such stamp or receipt or of the record of the issuance thereof, certified to by a United States internal-revenue officer having charge of such record, is admissible as evidence in like case and with like effect as the original stamp or receipt. [39 Stat. L. 908.]

SEC. 27. [Enforcement of provisions — officers who must enforce.] That it shall be the duty of the governor of Alaska, the United States marshals and their deputies, mayors, and members of town councils, town marshals, and police officers of all incorporated towns in Alaska, all Federal game wardens, agents of the Bureau of Fisheries and Forestry Service, customs collectors and their deputies, employees of the Bureau of Education, prosecuting attorneys and their deputies, and all other Federal and Territorial executive officers to enforce the provisions of this Act. [39 Stat. L. 908.]

SEC. 28. [Prosecutions for violations — information — indictment — perjury.] That prosecutions for violations of the provisions of this Act shall be on information filed by any such officer before any justice of the peace or district judge, or upon indictment by any grand jury of the Territory of Alaska, and said United States district attorney or his deputy shall file such information upon the presentation to him or his assistants of sworn information that the law has been violated; and in such prosecutions anyone making a false oath to any material fact shall be deemed guilty of perjury. [39 Stat. L. 908.]

SEC. 29. [Importations of liquors by water — misdemeanor.] That any person, company, or corporation who shall import or carry liquors into or upon the Territorial waters of Alaska in or upon any steamship, steamboat, vessel, boat, or other water craft, or shall permit the same to be so imported or carried into or upon said waters, except under the provisions of this Act, shall be guilty of a misdemeanor, and upon conviction shall be punished as provided in section one of this Act. [39 Stat. L. 908.]

SEC. 30. [Liquor licenses — issuance.] That in addition to the power now exercised the judges of the district courts of Alaska may grant liquor

licenses for any period of time less than one year upon a pro rata of the license fee for one year, but not to extend beyond the first day of January, nineteen hundred and eighteen, under the provisions of law now in force there so far as the same are applicable. [39 Stat. L. 909.]

Sec. 31. [Additional legislation in aid of enforcement.] That the Legislature of the Territory of Alaska may pass additional legislation in aid of the enforcement of this Act not inconsistent with its provisions. [39 Stat. L. 909.]

Sec. 32. [Rules of construction.] That in the interpretation of this Act words of the singular number shall be deemed to include their plurals, and words of the masculine gender shall be deemed to include the feminine, as the case may be. [39 Stat. L. 909.]

Sec. 33. [Taking effect of act — repeal of inconsistent laws.] That this Act shall be in full force and effect on and after the first day of January, nineteen hundred and eighteen, and all laws and parts of laws inconsistent herewith be, and they are hereby, repealed as of that date. [39 Stat. L. 909.]

[Military and post roads — construction — estimates.] * * * That hereafter, so long as the construction and maintenance of "Military and Post" Roads in Alaska, and of other roads, bridges, and trails in that Territory shall remain under the direction of the Secretary of War, he be authorized to submit such estimates for the consideration of Congress as are in his judgment necessary for a proper prosecution of the work. [— Stat. L. —.]

This is from the Army Appropriation Act of July 9, 1918, ch. —.

ALIEN PROPERTY CUSTODIAN

See TRADING WITH THE ENEMY.

ALIENS

Act of April 16, 1918, ch. —, 60.

Removal of Alien Enemies—R. S. sec. 4067 amended, 60.

CROSS-REFERENCES

See also *IMMIGRATION; NATURALIZATION; TRADING WITH THE ENEMY.*

An. Act To amend section four thousand and sixty-seven of the Revised Statutes by extending its scope to include women.

[Act of April 16, 1918, ch. —, — Stat. L. —.]

[Removal of alien enemies — R. S. sec. 4067 amended.] That section four thousand and sixty-seven of the Revised Statutes be, and the same is hereby, amended so as to read as follows:

“Sec. 4067. Whenever there is a declared war between the United States and any foreign nation or government, or any invasion or predatory incursion is perpetrated, attempted, or threatened against the territory of the United States by any foreign nation or government, and the President makes public proclamation of the event, all natives, citizens, denizens, or subjects of the hostile nation or government, being of the age of fourteen years and upward, who shall be within the United States and not actually naturalized, shall be liable to be apprehended, restrained, secured, and removed as alien enemies. The President is authorized, in any such event, by his proclamation thereof, or other public act, to direct the conduct to be observed, on the part of the United States, toward the aliens who become so liable; the manner and degree of the restraint to which they shall be subject and in what cases, and upon what security their residence shall be permitted, and to provide for the removal of those who, not being permitted to reside within the United States, refuse or neglect to depart therefrom; and to establish any other regulations which are found necessary in the premises and for the public safety.” *[— Stat. L. —.]*

For R. S. sec. 4067 before this amendment, see 1 Fed. Stat. Ann. (2d ed.) 364; 1 Fed. Stat. Ann. 435.

ANIMALS

Act of March 4, 1917, ch. 179, 61.

Foot and Mouth and Other Contagious Diseases — Eradication, 61.

Act of Aug. 10, 1917, ch. —, 61.

Sec. 9. Tick-Infested Cattle — Admission for Immediate Slaughter, 61.

[Foot and mouth and other contagious diseases — eradication.] * * *

In case of an emergency arising out of the existence of foot-and-mouth disease, rinderpest, contagious pleuropneumonia, or other contagious or infectious disease of animals which, in the opinion of the Secretary of Agriculture, threatens the live-stock industry of the country, he may expend in the city of Washington or elsewhere, out of any money in the Treasury not otherwise appropriated, the sum of \$1,000,000, which sum is hereby appropriated, or so much thereof as he determines to be necessary, in the arrest and eradication of any such disease, including the payment of claims growing out of past and future purchases and destruction, in cooperation with the States, of animals affected by or exposed to, or of materials contaminated by or exposed to, any such disease, wherever found and irrespective of ownership, under like or substantially similar circumstances, when such owner has complied with all lawful quarantine regulations: *Provided*, That the payment for animals hereafter purchased may be made on appraisement based on the meat, dairy, or breeding value, but in case of appraisement based on breeding value no appraisement of any animal shall exceed three times its meat or dairy value, and except in case of an extraordinary emergency, to be determined by the Secretary of Agriculture, the payment by the United States Government for any animal shall not exceed one-half of any such appraisements: [39 Stat. L. 1167.]

This is from the Agricultural Appropriations Act of March 4, 1917, ch. 179.

For former provisions on this subject, see the Act of Feb. 2, 1903, ch. 349, given in 1 Fed. Stat. Ann. (2d ed.) 411.

SEC. 9. [Tick-infested cattle — admission for immediate slaughter.]
That the Act of August thirtieth, eighteen hundred and ninety, entitled "An Act providing for an inspection of meats for exportation, prohibiting the importation of adulterated articles of food or drink, and authorizing the President to make proclamation in certain cases, and for other purposes" (Twenty-sixth Statutes at Large, page four hundred and fourteen), is hereby amended so as to authorize the Secretary of Agriculture, within his discretion and under such joint regulations as may be prescribed by the Secretary of Agriculture and the Secretary of the Treasury to permit the admission for immediate slaughter at ports of entry of tick-infested cattle which are otherwise free from disease and which have not been exposed to the infection of any other disease within sixty days next before their exportation from Mexico, South and Central America the islands of the Gulf of Mexico and the Caribbean Sea into those parts of the United States below

the southern cattle quarantine line at such ports of entry as may be designated by said joint regulations and also subject to the provisions of sections seven, eight, nine, and ten of said Act of August thirtieth, eighteen hundred and ninety: *Provided*, That the importation of tick-infested cattle from any country referred to in this section in which foot-and-mouth disease exists, which existence shall be determined by the Secretary of Agriculture, is prohibited: *Provided further*, That all cattle imported under the provisions of this section shall be slaughtered in accordance with the provisions of the Act of June thirtieth, nineteen hundred and six (Thirty-fourth Statutes at Large, page six hundred and seventy-four), commonly called the meat inspection amendment, and the rules and regulations promulgated thereunder by the Secretary of Agriculture, and that their hides shall be disposed of under rules and regulations to be prescribed by the Secretary of Agriculture. [— *Stat. L.* —.]

The foregoing section 9 is a part of an Act of Aug. 10, 1917, ch. —, entitled "An Act to provide further for the national security and defense, by stimulating agriculture and facilitating the distribution of agricultural products." The entire Act is set out or referred to in AGRICULTURE, *ante*, p. 44, and section 12, given in AGRICULTURE, *ante*, p. 46, is applicable to this section and should be read in connection with it.

For the Act of Aug. 30, 1890, ch. 839, mentioned in the text, see 1 Fed. Stat. Ann. 442; 1 Fed. Stat. Ann. (2d ed.) 374.

The Act of June 30, 1906, ch. 3913, mentioned in the text was superseded by the similar provisions of the Act of March 4, 1907, ch. 2907, given in 1909 Supp. Fed. Stat. Ann. 46; 1 Fed. Stat. Ann. (2d ed.) 397.

ANTI-TRUST ACTS

See TRADE COMBINATIONS AND TRUSTS

ARID LANDS

See WATERS

ARMY

See WAR DEPARTMENT AND MILITARY ESTABLISHMENT

ARTICLES OF WAR

See WAR DEPARTMENT AND MILITARY ESTABLISHMENT.

ASYLUMS

See HOSPITALS AND ASYLUMS.

AVIATION

Act of Oct. 1, 1917, ch. —, 63.

Sec. 1. Aircraft Board — Creation, 63.

2. Membership of Board, 63.

3. Term of Office — Compensation, 64.

4. Powers and Duties, 64.

5. Clerks and Other Employees — Offices — Expenses, 64.

Act of Aug. 29, 1916, ch. 418, 65.

Sec. 1. Acceptance of Land for Sites — Acquirement of Land for Sites, 65.

Act of March 4, 1917, ch. 180, 65.

Aircraft — Purchase of Patent — Effect of Litigation Involving Validity of Patent, 65.

Act of July 27, 1917, ch. —, 65.

Aviation Stations — Site — North Island, California, 65.

Act of Oct. 6, 1917, ch. —, 66.

Aviation Station — Site — New Jersey, 66.

Act of Oct. 6, 1917, ch. —, 67.

Sec. 1. War Materials Used in Construction of Airplanes — Sale by President, 67.

Act of July 9, 1918, ch. —, 67.

Aviation, etc., Stations — Experimental Work — Acquisition of Lands, 67.

Ch. XVI, Sec. 1. Aircraft Production Corporation — Creation — Composition — Duties, 67.

2. Director — Power and Duties — Stock, 68.

3. Dissolution, 68.

4. Assignment of Men and Officers for Duty — Civilian Employees, 68.

5. Existing Contracts for or Title to Equipment, Plants, etc. — Transfer, 69.

CROSS-REFERENCES

Naval Flying Corps, see NAVY.

Signal Corps, see WAR DEPARTMENT AND MILITARY ESTABLISHMENT.

An Act To create the Aircraft Board and provide for its maintenance.

[*Act of Oct. 1, 1917, ch. —, — Stat. L. —.*]

[**Sec. 1. [Aircraft Board — creation.]** That for the purpose of expanding and coordinating the industrial activities relating to aircraft, or parts of aircraft, produced for any purpose in the United States, and to facilitate generally the development of air service, a board is hereby created, to be known as the Aircraft Board, hereinafter referred to as the board.
[— *Stat. L. —.*]

SEC. 2. [Membership of board.] That the board shall number not more than nine in all, and shall include a civilian chairman, the Chief Signal

Officer of the Army, and two other officers of the Army, to be appointed by the Secretary of War; the Chief Constructor of the Navy and two other officers of the Navy, to be appointed by the Secretary of the Navy; and two additional civilian members. The chairman and civilian members shall be appointed by the President, by and with the advice and consent of the Senate. [— *Stat. L.* —.]

SEC. 3. [Term of office — compensation.] That said board and tenure of office of the members thereof shall continue during the pleasure of the President, but not longer than six months after the present war. The civilian members of the board shall serve without compensation. [— *Stat. L.* —.]

SEC. 4. [Powers and duties.] That the board is hereby empowered, under the direction and control of and as authorized by the Secretary of War and the Secretary of the Navy, respectively, on behalf of the Departments of War and Navy, to supervise and direct, in accordance with the requirements prescribed or approved by the respective departments, the purchase, production, and manufacture of aircraft, engines, and all ordnance and instruments used in connection therewith, and accessories and materials therefor, including the purchase, lease, acquisition, or construction of plants for the manufacture of aircraft, engines, and accessories. *Provided*, That the board may make recommendations as to contracts and their distribution in connection with the foregoing, but every contract shall be made by the already constituted authorities of the respective departments. [— *Stat. L.* —.]

SEC. 5. [Clerks and other employees — offices — expenses.] That the board is also empowered to employ, either in the District of Columbia or elsewhere, such clerks and other employees as may be necessary to the conduct of its business, including such technical experts and advisers as may be found necessary, and to fix their salaries. Such salaries shall conform to those usually paid by the Government for similar service: *Provided*, That by unanimous approval of the board higher compensation may be paid to technical experts and advisers. The board may rent suitable offices in the District of Columbia or elsewhere, purchase necessary office equipment and supplies, including scientific publications and printing, and may incur necessary administrative and contingent expenses, and for all of the expenses enumerated in this paragraph there shall be allotted by the Chief Signal Officer of the Army for the fiscal year nineteen hundred and seventeen and nineteen hundred and eighteen the sum of \$100,000, or so much thereof as shall be necessary, from any appropriation now existing for or hereinafter made to the Signal Corps of the Army, and such appropriation is hereby made available for these purposes: *Provided further*, That except upon the joint and concurrent approval of the Secretary of War and the Secretary of the Navy there shall not be established or maintained under the board any office or organization duplicating or replacing, in whole or in part, any office or organization now existing that can be properly established or maintained by appropriations made for or available for the military or

naval services: *Provided further*, That a report shall be made to Congress on the first day of each regular session of the salaries paid from this appropriation to clerks and employees by grades, and the number in each such grade. [*— Stat. L. —.*]

[SEC. 1.] [Acceptance of land for sites — acquirement of land for sites.] * * * The Secretary of War is hereby authorized to accept for the United States from any citizen of the United States a donation of a tract or tracts of land suitable and desirable in his judgment for the purposes of an aviation field and remount station, the terms of the donation also to authorize the use of the property donated for any other service of the United States which may hereafter appear desirable.

The Secretary of War is directed to investigate the suitability of the various military reservations for aviation purposes, and should any of the reservations be found not suitable and not available for aviation he is authorized, in his discretion, to acquire, by purchase, condemnation, or otherwise, for the United States of America, such land as may be necessary for aviation purposes, and there is hereby appropriated, out of any money in the Treasury not otherwise appropriated, the sum of \$300,000, or so much thereof as may be necessary, for said purpose. [*39 Stat. L. 622.*]

This is from the Army Appropriation Act of Aug. 29, 1916, ch. 418.

[Aircraft — purchase of patent — effect of litigation involving validity of patent.] * * * That such arrangements may be made in relation to the purchase of any basic patent connected with the manufacture and development of aircraft in the United States as in the judgment of the Secretary of War and the Secretary of the Navy will be of the greatest advantage to the Government and to the development of the industry.

That in the event there shall be pending in court litigation involving the validity of said patent or patents, bond, with good and approved security in an amount sufficient to indemnify the United States, shall be required, payable to the United States, conditioned to repay to the United States the amount paid for said patent or patents in the event said patent or patents are finally adjudged invalid. [*39 Stat. L. 1169.*]

This is from the Naval Appropriation Act of March 4, 1917, ch. 180.

An Act Authorizing the President to take possession, on behalf of the United States, for use as sites for permanent aviation stations for the Army and Navy and for aviation school purposes, of the whole of North Island in the harbor of San Diego, California, and for other purposes.

[*Act of July 27, 1917, ch. —, — Stat. L. —.*]

[Aviation stations — site — North Island, California.] That the President be, and he is hereby, authorized to cause possession to be taken forth-

with, on behalf of the United States, for use for national defense and in connection therewith as sites for permanent aviation stations for the Army and Navy and for aviation school purposes, of the whole of North Island, in the harbor of San Diego, California, and the provisions of section three hundred and fifty-five, Revised Statutes, shall not apply to the expenditure of any appropriations for improvements thereon for aviation purposes.

The Attorney General or the claimants to the said North Island are authorized to make application for the determination and appraisal of any rights private parties may have in said island over and beyond any rights thereto in the United States to the District Court of the United States for the Southern District of California; the proceedings to be prosecuted in accordance with the laws of the State of California relating to the condemnation of property for public use. Either party may take an appeal from the judgment of such court direct to the Supreme Court of the United States within ninety days after such judgment is rendered. Upon the final ascertainment of the value of any right, title, or interest adjudged to be in any private claimants to the said island there shall be paid into court the value of the same as so determined, together with interest thereon at the rate of six per centum per annum from date possession thereof was taken as herein authorized; and thereupon the United States shall be vested with title to said lands. The amount so paid shall be distributed by order of the court to the owner or owners of such right, title, or interest in said island as their respective interests may be determined by the court. The amount necessary to pay the awards in favor of private claimants is hereby appropriated, out of any money in the Treasury not otherwise specifically appropriated, to be disbursed under orders of the Secretary of War. [*— Stat. L. —*]

For R. S. sec. 355 mentioned above, see 6 Fed. Stat. Ann. 605; 8 Fed. Stat. Ann. (2d ed.) 1105.

An Act To provide for the acquisition of an air station site for the United States Navy.

[*Act of Oct. 6, 1917, ch. —, — Stat. L. —.*]

[**Aviation station — site — New Jersey.**] That the Secretary of the Navy be and he is hereby, authorized to acquire, by purchase or condemnation, including all easements, riparian and other rights appurtenant thereto, for use for naval purposes, the tract of land situate at Cape May, New Jersey, lying between Princeton and Kansas Avenues and the water front and Cape May Avenue, comprising, exclusive of Pennsylvania Avenue, which intersects the tract and is to remain a public thoroughfare, approximately fifty-seven and seventy-three one-hundredths acres, or such enlarged area for which he may be able to contract within the appropriation, and there is hereby appropriated, to be paid out of any money in the Treasury not otherwise appropriated, for the acquisition of said property and of all easements, riparian and other rights appurtenant thereto, the sum of \$150,000: *Provided*, That the Secretary of the Navy shall authorize the payment of no part of this sum, except for perfecting the title and dredging Cold

Spring Harbor and the entrance thereto, in order to make it more available for naval purposes: *And provided further*, That the Secretary of the Navy be, and he is hereby, empowered in his discretion to acquire, if possible, additional acreage without increased cost and within the appropriation herein authorized, and to exact guarantees for the maintenance of the electric railway now running through the above described land; and power is hereby conferred upon the Secretary of the Navy to condemn the said tract of land for naval, aviation, and kindred purposes on the New Jersey coast adjacent to Cold Spring Harbor; and the Secretary of the Navy is hereby directed, in conducting his negotiations with the Cape May Real Estate Company, to maintain intact the obligation existing between the United States and the Cape May Real Estate Company, executed by the said company, June twenty-fifth, nineteen hundred and seven; and that this contract shall not be regarded as a waiver of either the obligation of the company or the rights of the United States. [— *Stat. L.* —.]

[SEC. 1.] * * * [War materials used in construction of airplanes — sale by President.] The President, during the present emergency, is authorized, through the head of any department of the Government, to sell any war materials used in the construction of airplanes which may have been or may hereafter be acquired by the United States for the purpose of the Army or Navy, or for the prosecution of war, to any person, firm, or corporation, or to any foreign state or government engaged with the United States Government in the prosecution of war against a common enemy or its allies, in such manner and upon such terms, at not less than cost, as he in his discretion may deem best: *Provided*, That any moneys received by the United States hereunder shall become available as part of the appropriation by which said property was purchased by the United States. [— *Stat. L.* —.]

This is from the Deficiencies Appropriations Act of Oct. 6, 1917, ch. —.

[Aviation, etc., stations — experimental work — acquisition of land.] * * * And also, for the establishment, enlargement, equipment, maintenance, and operation of aviation stations, balloon schools, fields for testing and experimental work, including (a) the acquisition of land, or any interest in land, with any buildings and improvements thereon, by purchase, lease, donation, condemnation, or otherwise: *Provided*, That by order of the President any Government property or unappropriated or reserved public lands may be reserved from entry, designated, and used for such aviation stations or fields for testing and experimental work. [— *Stat. L.* —.]

The foregoing paragraph and the following secs. 1-5 are from the Army Appropriation Act of July 9, 1918, ch. —.

[SEC. 1.] [Aircraft Production Corporation — creation — composition — duties.] That the Director of Aircraft Production may, whenever in his judgment it will facilitate and expedite the production of aircraft,

aircraft equipment, or materials therefor, for the United States and Governments allied with it in the prosecution of the present war, form under the laws of the District of Columbia or under the laws of any State one or more corporations for the purchase, production, manufacture, and sale of aircraft, aircraft equipment, or materials therefor, and to build, own, and operate railroads in connection therewith. The total capital stock of the corporation or corporations so formed, together with any bonds, notes, debentures, or other securities issued by them, shall not at any one time exceed \$100,000,000. [— *Stat. L.* —.]

This sec. 1 and the following secs. 2-5 constitute Chapter XVI of the Army Appropriation Act of July 9, 1918, ch. —.

SEC. 2. [Director — powers and duties — stock.] That the Director of Aircraft Production may, for and on behalf of the United States, subscribe, purchase, and vote not less than a majority of the voting capital stock of any such corporation, and may purchase for and on behalf of the United States all or any part of the preferred nonvoting stock, bonds, notes, debentures, or other securities issued by such corporations, and do all things necessary to protect the interest of the United States and to carry out the purpose of this chapter; and, with the approval of the Secretary of War, may sell any or all of the stock, bonds, notes, debentures, or other securities of the United States in such corporation: *Provided*, That at no time shall the United States be a minority holder of voting stock therein. Any sums heretofore or hereafter appropriated for the purchase or procurement of aircraft, aircraft equipment, or materials therefor, for the Army shall be available for the purchase of the capital stock of such corporation or corporations or their bonds, notes, debentures, or other securities. [— *Stat. L.* —.]

SEC. 3. [Dissolution.] That within one year from the signing of a treaty of peace with the Imperial German Government the Director of Aircraft Production shall, on behalf of the United States as a stockholder, institute such proceedings as are necessary to dissolve such corporation or corporations under the laws of the District of Columbia or the State or States under which such corporation or corporations are organized. Upon the dissolution of the corporation or corporations the same shall be liquidated and the assets distributed in accordance with the laws of the District of Columbia or the State or States under which such corporation or corporations are organized. [— *Stat. L.* —.]

SEC. 4. [Assignment of men and officers for duty — civilian employees.] That the Secretary of War is hereby authorized to assign for duty, under the direction of the Director of Aircraft Production, any enlisted men or commissioned officers, from time to time, in the military organization as he shall deem necessary or desirable to carry on the work of such corporation or corporations: *Provided*, That nothing in this chapter shall prevent such corporation or corporations from employing civilians in the manner customary in the conduct of ordinary business under corporate organization. [— *Stat. L.* —.]

SEC. 5. [Existing contracts for a title to equipment, plants, etc.— transfer.] That the Secretary of War, acting through the Director of Aircraft Production, is authorized to transfer, by appropriate instruments, to any such corporation as may be found under this chapter, any interest of the United States in any existing contracts for aircraft, aircraft equipment, or materials therefor, and the title to any lands, plants, railroads, or equipment used in or in connection with the production of aircraft, aircraft equipment, or materials therefor, on such terms as the Secretary of War, acting through the Director of Aircraft Production, shall deem fit. [— Stat. L. —.]

BANKRUPTCY

Act of March 2, 1917, ch. 153, 69.

Bankrupts — Debts Not Affected by Discharge — Former Act Amended, 69.

Orders in Bankruptcy Amended, 70.

Order No. 21, 70.

Order No. 32, 70.

CROSS-REFERENCE

As to finality of judgments of Circuit Courts of Appeals in Bankruptcy cases, see JUDICIARY.

An Act To amend section seventeen of the United States bankruptcy law of July first, eighteen hundred and ninety-eight, and amendments thereto of February fifth, nineteen hundred and three.

[*Act of March 2, 1917, ch. 153, 39 Stat. L. 999.*]

[Bankrupts — debts not affected by discharge — former Act amended.] That section seventeen of an Act entitled “An Act to establish a uniform system of bankruptcy throughout the United States,” approved July first, eighteen hundred and ninety-eight, as amended February fifth, nineteen hundred and three, be amended so as hereafter to read as follows:

“SEC. 17. Debts not affected by a discharge.—A discharge in bankruptcy shall release a bankrupt from all of his provable debts, except such as (first) are due as a tax levied by the United States, the State, county, district or municipality in which he resides; (second) are liabilities for obtaining property by false pretenses or false representations, or for willful and malicious injuries to the person or property of another, or for alimony due or to become due, or for maintenance or support of wife or child, or for seduction of an unmarried female, or for breach of promise of marriage accompanied by seduction, or for criminal conversation; (third) have not been duly scheduled in time for proof and allowance, with the name of the creditor if known to the bankrupt, unless such creditor had notice of actual knowledge of the proceedings in bankruptcy; or (fourth) were created by his fraud, embezzlement, misappropriation, or defalcation while acting as an officer or in any fiduciary capacity.” [39 Stat. L. 999.]

For the Bankruptcy Act of July 1, 1898, ch. 541, § 17, amended by this Act, see 1 Fed. Stat. Ann. 578, 1912 Supp. Fed. Stat. Ann. 570; 1 Fed. Stat. Ann. (2d ed.) 708. The amendment of this section consisted in the addition to the class of debts not affected by discharge, of liability “for breach of promise of marriage accompanied by seduction.”

Orders in Bankruptcy Amended**SUPREME COURT OF THE UNITED STATES.**

October Term, 1915.

IT IS ORDERED that General Order in Bankruptcy No. 21 be amended so as to read as follows:

XXI.*Proof of Debts.*

1. Depositions to prove claims against a bankrupt's estate shall be correctly entitled in the court and in the cause. When made to prove a debt due to a partnership, it must appear on oath that the deponent is a member of the partnership; when made by an agent, the reason the deposition is not made by the claimant in person must be stated; and when made to prove a debt due to a corporation, the deposition shall be made by the treasurer, or, if the corporation has no treasurer, by the officer whose duties most nearly correspond to those of treasurer; if the treasurer or corresponding officer is not within the district wherein the bankruptcy proceedings are pending, the deposition may be made by some officer or agent of the corporation having knowledge of the facts. Depositions to prove debts existing in open account shall state when the debt became or will become due; and if it consists of items maturing at different dates the average due date shall be stated, in default of which it shall not be necessary to compute interest upon it. All such depositions shall contain an averment that no note has been received for such account, nor any judgment rendered thereon. Proofs of debt received by any trustee shall be delivered to the referee to whom the cause is referred.

(Promulgated November 1, 1915. See 239 U. S. 623.)

For General Order in Bankruptcy amended hereby, see 1 Fed. Stat. Ann. (2d ed.) 856.

SUPREME COURT OF THE UNITED STATES.

October Term, 1916.

ORDER.—It is ordered that General Order in Bankruptcy No. XXXII be amended so as to read as follows: Opposition to discharge or composition: A creditor opposing the application of a bankrupt for his discharge, or for the confirmation of a composition, shall enter his appearance in opposition thereto on the day when the creditors are required to show cause, and shall file a specification in writing of the grounds of his opposition within 10 days thereafter, unless the time shall be shortened or enlarged by special order of the judge.

(Promulgated June 4, 1917. See 244 U. S. 641.)

For General Order in Bankruptcy No. 32, amended hereby, see 1 Fed. Stat. Ann. (2d ed.) 858.

BANKS

Federal Farm Loan Banks, see AGRICULTURE.

Federal Reserve Banks, see NATIONAL BANKS.

See generally NATIONAL BANKS; TRADE COMBINATIONS AND TRUSTS.

BARRELS

See WEIGHTS AND MEASURES.

BASKETS

See AGRICULTURE.

BILLS OF LADING

Act of Aug. 29, 1916, ch. 415, 73.

- Sec. 1. Bills of Lading Act — Application, 73.*
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An Act Relating to bills of lading in interstate and foreign commerce.

[Act of Aug. 29, 1916, ch. 415, 39 Stat. L. 538.]

[SEC. 1.] **[Bills of Lading Act — application.]** That bills of lading issued by any common carrier for the transportation of goods in any Territory of the United States, or the District of Columbia, or from a place in a State to a place in a foreign country, or from a place in one State to a place in another State, or from a place in one State to a place in the same State through another State or foreign country, shall be governed by this Act. *[39 Stat. L. 538.]*

SEC. 2. **[Straight bill defined.]** That a bill in which it is stated that the goods are consigned or destined to a specified person is a straight bill. *[39 Stat. L. 539.]*

SEC. 3. **[Order bill defined — negotiability.]** That a bill in which it is stated that the goods are consigned or destined to the order of any person named in such bill is an order bill. Any provision in such a bill or in any notice, contract, rule, regulation, or tariff that it is nonnegotiable shall be null and void and shall not affect its negotiability within the meaning of this Act unless upon its face and in writing agreed to by the shipper. *[39 Stat. L. 539.]*

SEC. 4. **[Order bills in parts or sets — liability of carrier.]** That order bills issued in a State for the transportation of goods to any place in the United States on the Continent of North America, except Alaska and Panama, shall not be issued in parts or sets. If so issued, the carrier issuing them shall be liable for failure to deliver the goods described therein to anyone who purchases a part for value in good faith, even though the purchase be after the delivery of the goods by the carrier to a holder of one of the other parts: *Provided, however,* That nothing contained in this section shall be interpreted or construed to forbid the issuing of order bills in parts or sets for such transportation of goods to Alaska, Panama, Porto Rico, the Philippines, Hawaii, or foreign countries, or to impose the liabilities set forth in this section for so doing. *[39 Stat. L. 539.]*

SEC. 5. **[Word "duplicate" on order bill — liability of carrier.]** That when more than one order bill is issued in a State for the same goods to be transported to any place in the United States on the Continent of North America, except Alaska and Panama, the word "duplicate," or some other word or words indicating that the document is not an original bill, shall be placed plainly upon the face of every such bill except the one first issued. A carrier shall be liable for the damage caused by his failure so to do to anyone who has purchased the bill for value in good faith as an original,

even though the purchase be after the delivery of the goods by the carrier to the holder of the original bill: *Provided, however,* That nothing contained in this section shall in such case for such transportation of goods to Alaska, Panama, Porto Rico, the Philippines, Hawaii, or foreign countries be interpreted or construed so as to require the placing of the word "duplicate" thereon, or to impose the liabilities set forth in this section for failure so to do. [39 Stat. L. 539.]

SEC. 6. [Word "nonnegotiable" on straight bill.] That a straight bill shall have placed plainly upon its face by the carrier issuing it "non-negotiable" or "not negotiable."

This section shall not apply, however, to memoranda or acknowledgments of an informal character. [39 Stat. L. 539.]

SEC. 7. [Order bill — limitation of negotiability.] That the insertion in an order bill of the name of a person to be notified of the arrival of the goods shall not limit the negotiability of the bill or constitute notice to a purchaser thereof of any rights or equities of such person in the goods. [39 Stat. L. 539.]

SEC. 8. [Delivery of goods by carrier — when required — liability for failure to deliver.] That a carrier, in the absence of some lawful excuse, is bound to deliver goods upon a demand made either by the consignee named in the bill for the goods or, if the bill is an order bill, by the holder thereof, if such demand is accompanied by —

(a) An offer in good faith to satisfy the carrier's lawful lien upon the goods;

(b) Possession of the bill of lading and an offer in good faith to surrender, properly indorsed, the bill which was issued for the goods, if the bill is an order bill; and

(c) A readiness and willingness to sign, when the goods are delivered, an acknowledgment that they have been delivered, if such signature is requested by the carrier.

In case the carrier refuses or fails to deliver the goods, in compliance with a demand by the consignee or holder so accompanied, the burden shall be upon the carrier to establish the existence of a lawful excuse for such refusal or failure. [39 Stat. L. 539.]

SEC. 9. [Delivery, when justified.] That a carrier is justified, subject to the provisions of the three following sections, in delivering goods to one who is —

(a) A person lawfully entitled to the possession of the goods, or

(b) The consignee named in a straight bill for the goods, or

(c) A person in possession of an order bill for the goods, by the terms of which the goods are deliverable to his order; or which has been indorsed to him, or in blank by the consignee, or by the mediate or immediate indorsee of the consignee. [39 Stat. L. 540.]

SEC. 10. [Delivered to one not lawfully entitled — liability.] That where a carrier delivers goods to one who is not lawfully entitled to the possession of them, the carrier shall be liable to anyone having a right of

property or possession in the goods if he delivered the goods otherwise than as authorized by subdivisions (b) and (c) of the preceding section; and, though he delivered the goods as authorized by either of said subdivisions, he shall be so liable if prior to such delivery he—

(a) Had been requested, by or on behalf of a person having a right of property or possession in the goods, not to make such delivery, or

(b) Had information at the time of the delivery that it was to a person not lawfully entitled to the possession of the goods.

Such request or information, to be effective within the meaning of this section, must be given to an officer or agent of the carrier, the actual or apparent scope of whose duties includes action upon such a request or information, and must be given in time to enable the officer or agent to whom it is given, acting with reasonable diligence, to stop delivery of the goods. [39 Stat. L. 540.]

SEC. 11. [Failure to cancel order bill on delivery — effect.] That except as provided in section twenty-six, and except when compelled by legal process, if a carrier delivers goods for which an order bill had been issued, the negotiation of which would transfer the right to the possession of the goods, and fails to take up and cancel the bill, such carrier shall be liable for failure to deliver the goods to anyone who for value and in good faith purchases such bill, whether such purchaser acquired title to the bill before or after the delivery of the goods by the carrier and notwithstanding delivery was made to the person entitled thereto. [39 Stat. L. 540.]

SEC. 12. [Delivery of part of goods — liability of carrier on bill.] That except as provided in section twenty-six, and except when compelled by legal process, if a carrier delivers part of the goods for which an order bill had been issued and fails either—

(a) To take up and cancel the bill, or

(b) To place plainly upon it a statement that a portion of the goods has been delivered with a description which may be in general terms either of the goods or packages that have been so delivered or of the goods or packages which still remain in the carrier's possession, he shall be liable for failure to deliver all the goods specified in the bill to anyone who for value and in good faith purchases it, whether such purchaser acquired title to it before or after the delivery of any portion of the goods by the carrier, and notwithstanding such delivery was made to the person entitled thereto. [39 Stat. L. 540.]

SEC. 13. [Alteration, etc., of bill.] That any alteration, addition, or erasure in a bill after its issue without authority from the carrier issuing the same, either in writing or noted on the bill, shall be void, whatever be the nature and purpose of the change, and the bill shall be enforceable according to its original tenor. [39 Stat. L. 540.]

SEC. 14. [Loss, etc., of bill — delivery of goods on order of court.] That where an order bill has been lost, stolen, or destroyed a court of competent jurisdiction may order the delivery of the goods upon satisfactory proof of such loss, theft, or destruction and upon the giving of a bond, with sufficient surety, to be approved by the court, to protect the carrier or any

person injured by such delivery from any liability or loss incurred by reason of the original bill remaining outstanding. The court may also in its discretion order the payment of the carrier's reasonable costs and counsel fees: *Provided*, a voluntary indemnifying bond without order of court shall be binding on the parties thereto.

The delivery of the goods under an order of the court, as provided in this section, shall not relieve the carrier from liability to a person to whom the order bill has been or shall be negotiated for value without notice of the proceedings or of the delivery of the goods. [39 Stat. L. 540.]

SEC. 15. [Bill not an original one — liability of carrier.] That a bill upon the face of which the word "duplicate" or some other word or words indicating that the document is not an original bill is placed, plainly shall impose upon the carrier issuing the same the liability of one who represents and warrants that such bill is an accurate copy of an original bill properly issued, but no other liability. [39 Stat. L. 541.]

SEC. 16. [Refusal of carrier to deliver — excuse from liability.] That no title to goods or right to their possession asserted by a carrier for his own benefit shall excuse him from liability for refusing to deliver the goods according to the terms of a bill issued for them, unless such title or right is derived directly or indirectly from a transfer made by the consignor or consignee after the shipment, or from the carrier's lien. [39 Stat. L. 541.]

SEC. 17. [Interpleader.] That if more than one person claim the title or possession of goods, the carrier may require all known claimants to interplead, either as a defense to an action brought against him for non-delivery of the goods or as an original suit, whichever is appropriate. [39 Stat. L. 541.]

SEC. 18. [Adverse claim — excuse from liability to deliver.] That if some one other than the consignee or the person in possession of the bill has a claim to the title or possession of the goods, and the carrier has information of such claim, the carrier shall be excused from liability for refusing to deliver the goods, either to the consignee or person in possession of the bill or to the adverse claimant, until the carrier has had a reasonable time to ascertain the validity of the adverse claim or to bring legal proceedings to compel all claimants to interplead. [39 Stat. L. 541.]

SEC. 19. [Failure to deliver — defense — right or title of third person.] That except as provided in the two preceding sections and in section nine, no right or title of a third person, unless enforced by legal process, shall be a defense to an action brought by the consignee of a straight bill or by the holder of an order bill against the carrier for failure to deliver the goods on demand. [39 Stat. L. 541.]

SEC. 20. [Loading of goods by carrier — counting packages — ascertaining kind and quantity — contents of bill.] That when goods are loaded by a carrier such carrier shall count the packages of goods, if package freight, and ascertain the kind and quantity of bulk freight, and such carrier shall not, in such cases, insert in the bill of lading or in any notice,

receipt, contract, rule, regulation, or tariff, "Shipper's weight, load, and count," or other words of like purport, indicating that the goods were loaded by the shipper and the description of them made by him or in case of bulk freight and freight not concealed by packages the description made by him. If so inserted, contrary to the provisions of this section, said words shall be treated as null and void and as if not inserted therein. [39 Stat. L. 541.]

SEC. 21. [Loading of goods by shipper — contents of bill — weighing facilities by shipper.] That when package freight or bulk freight is loaded by a shipper and the goods are described in a bill of lading merely by a statement of marks or labels upon them or upon packages containing them, or by a statement that the goods are said to be goods of a certain kind or quantity, or in a certain condition, or it is stated in the bill of lading that packages are said to contain goods of a certain kind or quantity or in a certain condition, or that the contents or condition of the contents of packages are unknown, or words of like purport are contained in the bill of lading, such statements, if true, shall not make liable the carrier issuing the bill of lading, although the goods are not of the kind or quantity or in the condition which the marks or labels upon them indicate, or of the kind or quantity or in the condition they were said to be by the consignor. The carrier may also by inserting in the bill of lading the words "Shipper's weight, load and count," or other words of like purport indicate that the goods were loaded by the shipper and the description of them made by him; and if such statement be true, the carrier shall not be liable for damages caused by the improper loading or by the nonreceipt or by the misdescription of the goods described in the bill of lading: *Provided, however,* Where the shipper of bulk freight installs and maintains adequate facilities for weighing such freight, and the same are available to the carrier, then the carrier, upon written request of such shipper and when given a reasonable opportunity so to do, shall ascertain the kind and quantity of bulk freight within a reasonable time after such written request, and the carriers shall not in such cases insert in the bill of lading the words "Shipper's weight," or other words of like purport, and if so inserted contrary to the provisions of this section, said words shall be treated as null and void and as if not inserted therein. [39 Stat. L. 541.]

SEC. 22. [Terms of bill as binding carrier — liability for acts of agent.] That if a bill of lading has been issued by a carrier or on his behalf by an agent or employee the scope of whose actual or apparent authority includes the receiving of goods and issuing bills of lading therefor for transportation in commerce among the several States and with foreign nations, the carrier shall be liable to (a) the owner of goods covered by a straight bill subject to existing right of stoppage in transitu or (b) the holder of an order bill, who has given value in good faith, relying upon the description therein of the goods, for damages caused by the nonreceipt by the carrier of all or part of the goods or their failure to correspond with the description thereof in the bill at the time of its issue. [39 Stat. L. 542.]

SEC. 23. [Garnishment attachment, etc., of goods in carrier's possession — effect.] That if goods are delivered to a carrier by the owner or

by a person whose act in conveying the title to them to a purchaser for value in good faith would bind the owner, and an order bill is issued for them, they can not thereafter, while in the possession of the carrier, be attached by garnishment or otherwise or be levied upon under an execution unless the bill be first surrendered to the carrier or its negotiation enjoined. The carrier shall in no such case be compelled to deliver the actual possession of the goods until the bill is surrendered to him or impounded by the court. [39 Stat. L. 542.]

SEC. 24. [Injunction, etc., in attaching bill.] That a creditor whose debtor is the owner of an order bill shall be entitled to such aid from courts of appropriate jurisdiction by injunction and otherwise in attaching such bill or in satisfying the claim by means thereof as is allowed at law or in equity in regard to property which can not readily be attached or levied upon by ordinary legal process. [39 Stat. L. 542.]

SEC. 25. [Liens of carrier — custom.] That if an order bill is issued the carrier shall have a lien on the goods therein mentioned for all charges on those goods for freight, storage, demurrage and terminal charges, and expenses necessary for the preservation of the goods or incident to their transportation subsequent to the date of the bill and all other charges incurred in transportation and delivery, unless the bill expressly enumerates other charges for which a lien is claimed. In such case there shall also be a lien for the charges enumerated so far as they are allowed by law and the contract between the consignor and the carrier. [39 Stat. L. 542.]

SEC. 26. [Sale of goods to satisfy lien — effect.] That after goods have been lawfully sold to satisfy a carrier's lien, or because they have not been claimed, or because they are perishable or hazardous, the carrier shall not thereafter be liable for failure to deliver the goods themselves to the consignee or owner of the goods, or to a holder of the bill given for the goods when they were shipped, even if such bill be an order bill. [39 Stat. L. 542.]

SEC. 27. [Order bill — negotiation by delivery.] That an order bill may be negotiated by delivery where, by the terms of the bill, the carrier undertakes to deliver the goods to the order of a specified person, and such person or a subsequent indorsee of the bill has indorsed it in blank. [39 Stat. L. 542.]

SEC. 28. [Order bill — negotiation by indorsement.] That an order bill may be negotiated by the indorsement of the person to whose order the goods are deliverable by the tenor of the bill. Such indorsement may be in blank or to a specified person. If indorsed to a specified person, it may be negotiated again by the indorsement of such person in blank or to another specified person. Subsequent negotiation may be made in like manner. [39 Stat. L. 543.]

SEC. 29. [Transfer of bill by delivery — negotiation of straight bill.] That a bill may be transferred by the holder by delivery, accompanied

with an agreement, express or implied, to transfer the title to the bill or to the goods represented thereby. A straight bill can not be negotiated free from existing equities, and the indorsement of such a bill gives the transferee no additional right. [39 Stat. L. 543.]

SEC. 30. [Order bill — by whom negotiated.] That an order bill may be negotiated by any person in possession of the same, however such possession may have been acquired, if by the terms of the bill the carrier undertakes to deliver the goods to the order of such person, or if at the time of negotiation the bill is in such form that it may be negotiated by delivery. [39 Stat. L. 543.]

SEC. 31. [Title acquired by person negotiating order bill.] That a person to whom an order bill has been duly negotiated acquires thereby —

(a) Such title to the goods as the person negotiating the bill to him had or had ability to convey to a purchaser in good faith for value, and also such title to the goods as the consignee and consignor had or had power to convey to a purchaser in good faith for value; and

(b) The direct obligation of the carrier to hold possession of the goods for him according to the terms of the bill as fully as if the carrier had contracted directly with him. [39 Stat. L. 543.]

SEC. 32. [Title acquired by person to whom bill has been delivered but not negotiated.] That a person to whom a bill has been transferred, but not negotiated, acquires thereby as against the transferor the title to the goods, subject to the terms of any agreement with the transferor. If the bill is a straight bill such person also acquires the right to notify the carrier of the transfer to him of such bill and thereby to become the direct obligee of whatever obligations the carrier owed to the transferor of the bill immediately before the notification.

Prior to the notification of the carrier by the transferor or transferee of a straight bill the title of the transferee to the goods and the right to acquire the obligation of the carrier may be defeated by garnishment or by attachment or execution upon the goods by a creditor of the transferor, or by a notification to the carrier by the transferor or a subsequent purchaser from the transferor of a subsequent sale of the goods by the transferor.

A carrier has not received notification within the meaning of this section unless an officer or agent of the carrier, the actual or apparent scope of whose duties includes action upon such a notification, has been notified; and no notification shall be effective until the officer or agent to whom it is given has had time, with the exercise of reasonable diligence, to communicate with the agent or agents having actual possession or control of the goods. [39 Stat. L. 543.]

SEC. 33. [Transfer of order bill for value by delivery — right to compel negotiation.] That where an order bill is transferred for value by delivery, and the indorsement of the transferor is essential for negotiation, the transferee acquires a right against the transferor to compel him to indorse the bill, unless a contrary intention appears. The negotiation shall take effect as of the time when the indorsement is actually made. This obligation may be specifically enforced. [39 Stat. L. 543.]

SEC. 34. [Implied warranties arising out of transfer of bill.] That a person who negotiates or transfers for value a bill by indorsement or delivery, unless a contrary intention appears, warrants —

- (a) That the bill is genuine;
- (b) That he has a legal right to transfer it;
- (c) That he has knowledge of no fact which would impair the validity or worth of the bill.
- (d) That he has a right to transfer the title to the goods, and that the goods are merchantable or fit for a particular purpose whenever such warranties would have been implied if the contract of the parties had been to transfer without a bill the goods represented thereby. [39 Stat. L. 543.]

SEC. 35. [Indorsement of bill — liability of indorser.] That the indorsement of a bill shall not make the indorser liable for any failure on the part of the carrier or previous indorsers of the bill to fulfill their respective obligations. [39 Stat. L. 544.]

SEC. 36. [Mortgagee, etc., of bill for security — implied warranties.] That a mortgagee or pledgee or other holder of a bill for security who in good faith demands or receives payment of the debt for which such bill is security, whether from a party to a draft drawn for such debt or from any other person, shall not be deemed by so doing to represent or warrant the genuineness of such bill or the quantity or quality of the goods therein described. [39 Stat. L. 544.]

SEC. 37. [Negotiation of bill — impairment of validity.] That the validity of the negotiation of a bill is not impaired by the fact that such negotiation was a breach of duty on the part of the person making the negotiation, or by the fact that the owner of the bill was deprived of the possession of the same by fraud, accident, mistake, duress, loss, theft, or conversion, if the person to whom the bill was negotiated, or a person to whom the bill was subsequently negotiated, gave value therefor in good faith, without notice of the breach of duty, or fraud, accident, mistake, duress, loss, theft, or conversion. [39 Stat. L. 544.]

SEC. 38. [Possession of order bill after sale, etc., of goods — subsequent negotiation — effect.] That where a person, having sold, mortgaged, or pledged goods which are in a carrier's possession and for which an order bill has been issued, or having sold, mortgaged, or pledged the order bill representing such goods, continues in possession of the order bill, the subsequent negotiation thereof by that person under any sale, pledge, or other disposition thereof to any person receiving the same in good faith, for value and without notice of the previous sale, shall have the same effect as if the first purchaser of the goods or bill had expressly authorized the subsequent negotiation. [39 Stat. L. 544.]

SEC. 39. [Seller's lien or right of stoppage in transitu — defeat of rights of purchaser for value.] That where an order bill has been issued for goods no seller's lien or right of stoppage in transitu shall defeat the rights of any purchaser for value in good faith to whom such bill has been

negotiated, whether such negotiation be prior or subsequent to the notification to the carrier who issued such bill of the seller's claim to a lien or right of stoppage in transitu. Nor shall the carrier be obliged to deliver or justified in delivering the goods to an unpaid seller unless such bill is first surrendered for cancellation. [39 Stat. L. 544.]

SEC. 40. [Mortgagee or lien holder — limitation of rights and remedies] That, except as provided in section thirty-nine, nothing in this Act shall limit the rights and remedies of a mortgagee or lien holder whose mortgage or lien on goods would be valid, apart from this Act, as against one who for value and in good faith purchased from the owner, immediately prior to the time of their delivery to the carrier, the goods which are subject to the mortgage or lien and obtained possession of them. [39 Stat. L. 544.]

SEC. 41. [Offenses — violating provisions of Act.] That any person who, knowingly or with intent to defraud, falsely makes, alters, forges, counterfeits, prints or photographs any bill of lading purporting to represent goods received for shipment among the several States or with foreign nations, or with like intent utters or publishes as true and genuine any such falsely altered, forged, counterfeited, falsely printed or photographed bill of lading, knowing it to be falsely altered, forged, counterfeited, falsely printed or photographed, or aids in making, altering, forging, counterfeiting, printing or photographing, or uttering or publishing the same, or issues or aids in issuing or procuring the issue of, or negotiates or transfers for value a bill which contains a false statement as to the receipt of the goods, or as to any other matter, or who, with intent to defraud, violates, or fails to comply with, or aids in any violation of, or failure to comply with any provision of this Act, shall be guilty of a misdemeanor, and, upon conviction, shall be punished for each offense by imprisonment not exceeding five years, or by a fine not exceeding \$5,000, or both. [39 Stat. L. 544.]

SEC. 42. [Definitions.] First. That in this Act, unless the context of subject matter otherwise requires —

“Action” includes counterclaim, set-off, and suit in equity.

“Bill” means bill of lading governed by this Act.

“Consignee” means the person named in the bill as the person to whom delivery of the goods is to be made.

“Consignor” means the person named in the bill as the person from whom the goods have been received for shipment.

“Goods” means merchandise or chattels in course of transportation or which have been or are about to be transported.

“Holder” of a bill means a person who has both actual possession of such bill and a right of property therein.

“Order” means an order by indorsement on the bill.

“Person” includes a corporation or partnership, or two or more persons having a joint or common interest.

To “purchase” includes to take as mortgagee and to take as pledgee.

“State” includes any Territory, District, insular possession, or isthmian possession. [39 Stat. L. 545.]

SEC. 43. [**Retroactive effect.**] That the provisions of this Act do not apply to bills made and delivered prior to the taking effect thereof. [39 Stat. L. 545.]

SEC. 44. [**Invalidity of part of Act — effect as to remainder.**] That the provisions and each part thereof and the sections and each part thereof of this Act are independent and severable, and the declaring of any provision or part thereof, or provisions or part thereof, or section or part thereof, or sections or part thereof, unconstitutional shall not impair or render unconstitutional any other provision or part thereof or section or part thereof. [39 Stat. L. 545.]

SEC. 45. [**When Act becomes effective.**] That this Act shall take effect and be in force on and after the first day of January next after its passage. [39 Stat. L. 545.]

BONDS

See NATIONAL BANKS; PUBLIC DEBT.

BUREAU OF EFFICIENCY

See CIVIL SERVICE.

CANALS

See RIVERS, HARBORS AND CANALS; WATERS.

CANAL ZONE

See CRIMINAL LAW; HOSPITALS AND ASYLUMS; RIVERS, HARBORS AND CANALS.

CARRIERS

Transportation of Explosives, see EXPLOSIVES.

See generally BILLS OF LADING; INTERSTATE COMMERCE; UNFAIR COMPETITION; WAR DEPARTMENT AND MILITARY ESTABLISHMENT.

CEMETERIES

Act of July 1, 1918, ch. —, 83.

Sec. 1. National Cemetery — Railroads — Right of Way, 83.

Approaches to National Cemetery — Maintenance, 83.

Antietam Battlefield — Superintendent, 83.

[**Sec. 1.] [National cemetery — railroads — right of way.] * * ***

That no railroads shall be permitted upon the right of way which may have been acquired by the United States to a national cemetery, or to encroach upon any roads or walks constructed thereon and maintained by the United States. [— *Stat. L. —*.]

This and the two paragraphs of the text following are from the Sundry Civil Appropriation Act of July 1, 1918, ch. —.

Provisions similar to these have appeared in like Appropriation Acts for many years. See 2 Fed. Stat. Ann. (2d ed.) 25, 26.

[**Approaches to national cemetery — maintenance.] * * *** No part of any appropriation for national cemeteries or the repair of roadways thereto shall be expended in the maintenance of more than a single approach to any national cemetery. [— *Stat. L. —*.]

See the note to the preceding paragraph of the text.

[**Antietam Battlefield — superintendent.] * * *** For pay of superintendent of Antietam battle field, said superintendent to perform his duties under the direction of the Quartermaster Corps and to be selected and appointed by the Secretary of War, at his discretion, the person selected and appointed to this position to be an honorably discharged Union soldier, \$1,500. [— *Stat. L. —*.]

See the note to the second preceding paragraph of the text.

CENSUS

Act of Aug. 7, 1916, ch. 274, 84.

Sec. 1. Cotton Seed Statistics — Collection and Publication, 84.

2. Confidential Nature of Information Furnished — Penalty for Disclosing, 84.

3. Duty to Furnish Information — Failure to Furnish — Penalty, 84.

4. Raw and Prepared Cotton, etc. — Collection and Publication of Statistics, 85.

CROSS-REFERENCE

Division of Cotton and Tobacco Statistics, see COMMERCE DEPARTMENT:

An Act Authorizing the Director of the Census to collect and publish statistics of cotton seed and cottonseed products, and for other purposes.

[*Act of Aug. 7, 1916, ch. 274, 39 Stat. L. 436.*]

[SEC. 1.] **[Cotton seed statistics — collection and publication.]** That the Director of the Census be, and he is hereby, authorized and directed to collect and publish monthly statistics concerning the quantity of cotton seed received at oil mills, the quantity of seed crushed in such mills, the quantity of crude cottonseed products and refined oil produced, the quantities of these products shipped out of the mills and the quantities of these products and of cotton seed on hand, the quantities of crude and refined cottonseed oil held by refiners, by manufacturers of compound lard, butterine, oleomargarine, and soap, and by brokers, exporters, and warehousemen, engaged in handling crude and refined cottonseed oil, and the quantity of cotton seed and cottonseed products imported and exported: *Provided*, That the cost of the collection and publication of the statistics herein provided for shall not exceed \$10,000 per annum. [39 Stat. L. 436.]

SEC. 2. **[Confidential nature of information furnished — penalty for disclosing.]** That the information furnished by any individual establishment under the provisions of this Act shall be considered as strictly confidential and shall be used only for the statistical purpose for which it is supplied. Any employee of the Bureau of the Census who, without the written authority of the Director of the Census, shall publish or communicate any information given into his possession by reason of his employment under the provisions of this Act shall be guilty of a misdemeanor and shall, upon conviction thereof, be fined not more than \$1,000, or imprisoned not more than one year, or both. [39 Stat. L. 437.]

SEC. 3. **[Duty to furnish information — failure to furnish — penalty.]** That it shall be the duty of every owner, president, treasurer, secretary, director, or other officer or agent of any cottonseed-oil mill, manufacturing establishment, refinery, or warehouse, where cottonseed products are produced, manufactured, or stored, when requested by the Director of the Census or by any special agent or other employee of the Bureau of the Census acting under the instructions of said director, to furnish completely and correctly, to the best of his knowledge, all of the information concerning the quantity of cotton seed received, consumed, or on hand, and the quantity of crude and refined oil, cake and meal, hulls and linters produced, and the quantity of these products shipped and on hand. The request of the Director of the Census for information concerning the quantity of cotton seed received, consumed, and on hand, the quantity of crude oil shipped, and the quantity of crude oil consumed and stocks on hand may be made in writing or by a visiting representative, and if made in writing shall be forwarded by registered mail, and the registry receipt of the Post Office Department shall be accepted as prima facie evidence of such demand. Any owner, president, treasurer, secretary, director, or other officer or agent of any cottonseed oil or manufacturing establishment, refinery, or warehouse, where cotton seed and cottonseed products are

manufactured or stored, who, under the conditions hereinbefore stated, shall refuse or willfully neglect to furnish any of the information herein provided for or shall willfully give answers that are false shall be guilty of a misdemeanor and upon conviction thereof shall be fined not more than \$1,000. [39 Stat. L. 437.]

SEC. 4. [Raw and prepared cotton, etc.— collection and publication of statistics.] That the Director of the Census be, and he is hereby, authorized and directed to collect and publish statistics of raw and prepared cotton and linters, cotton waste, and hull fiber consumed in the manufacture of guncotton and explosives of all kinds, and of absorbent and medicated cotton, during the calendar year nineteen hundred and fifteen, and quarterly thereafter, and the quantity held in such establishments at the end of each quarter. The statistics herein provided for are in addition to those now collected in compliance with the Act of Congress approved July twenty-second, nineteen hundred and twelve, the provisions of that Act being made applicable to and governing the collection and publication of the data. [39 Stat. L. 437.]

For the Act of July 22, 1912, ch. 249, mentioned in this section, see 1914 Supp. Fed. Stat. Ann. 38; 2 Fed. Stat. Ann. (2d ed.) 55.

CHARITIES

Act of Feb. 27, 1917, ch. 137, 85.

American National Red Cross — Reports — Former Act Amended, 85.

An Act To amend section six of the Act entitled "An Act to incorporate the American National Red Cross," approved January fifth, nineteen hundred and five.

[*Act of Feb. 27, 1917, ch. 137, 39 Stat. L. 946.*]

[American National Red Cross — reports — former act amended.] That section six of the Act entitled "An Act to incorporate the American National Red Cross," approved January fifth, nineteen hundred and five, is hereby amended to read as follows:

"SEC. 6. That the said American National Red Cross shall as soon as practicable after the first day of July of each year make and transmit to the Secretary of War a report of its proceedings for the fiscal year ending June thirtieth next preceding, including a full, complete, and itemized report of receipts and expenditures of whatever kind, which report shall be duly audited by the War Department, and a copy of said report shall be transmitted to Congress by the War Department. [39 Stat. L. 946.]

For the Act of Jan. 5, 1906, ch. 23, § 6, amended by this Act, see 1909 Supp. Fed. Stat. Ann. 67; 2 Fed. Stat. Ann. (2d ed.) 64.

CHECKS

See PUBLIC MONEYS.

CHILD LABOR

See LABOR.

CHINESE EXCLUSION

Act of July 1, 1918, ch. —, 86.

Sec. 1. Enforcement of Chinese Exclusion Laws — Horses and Motor Vehicles, 86.

[SEC. 1.] [Enforcement of Chinese exclusion laws — horses and motor vehicles.] * * * That the purchase, use, maintenance, and operation of horses and motor vehicles required in the enforcement of the * * * Chinese exclusion laws outside of the District of Columbia may be contracted for and the cost thereof paid from the appropriation for the execution of those laws, under such terms and conditions as the Secretary of Labor may prescribe. [— *Stat. L.* —.]

This is from the Sundry Civil Appropriation Act of July 1, 1918, ch. —.

CITIZENSHIP

See NATURALIZATION.

CIVIL SERVICE

Act of Feb. 28, 1916, ch. 37, 86.

Sec. 1. Bureau of Efficiency — Creation — Duties, 86.

Res. of March 27, 1918, No. —, 86.

Examinations — Place of Holding, 87.

Act of July 3, 1918, ch. —, 87.

Sec. 1. Employees of Civil Service Commission, 87.

[SEC. 1.] [Bureau of Efficiency — creation — duties.] * * * Hereafter the Division of Efficiency of the Civil Service Commission shall be an independent establishment, and shall be known as the Bureau of Efficiency; and the officers and employees of the said division shall be transferred to the Bureau of Efficiency without reappointment, and the

records and papers pertaining to the work of the said division and the furniture, equipment, and supplies that have been purchased for it shall be transferred to the said bureau: *And provided further*, That the duties relating to efficiency ratings imposed upon the Civil Service Commission by section four of the legislative, executive, and judicial appropriation Act approved August twenty-third, nineteen hundred and twelve, and the duty of investigating the administrative needs of the service relating to personnel in the several executive departments and independent establishments, imposed on the Civil Service Commission by the legislative, executive, and judicial appropriation Act approved March fourth, nineteen hundred and thirteen, are transferred to the Bureau of Efficiency. [39 Stat. L. 15.]

This is from the Deficiencies Appropriation Act of Feb. 28, 1916, ch. 37.

For the Act of Aug. 23, 1912, ch. 350, § 4, mentioned in the text, see 1914 Supp. Fed. Stat. Ann. 44: 2 Fed. Stat. Ann. (2d ed.) 169.

The provision of the Act of March 4, 1913, ch. 142, § 1, 32 Stat. L. 750, mentioned in the paragraph, read as follows:

"The Civil Service Commission shall investigate and report to the President, with its recommendations, as to the administrative needs of the service relating to personnel in the several executive departments and independent establishments in the District of Columbia, and report to Congress details of expenditure and of progress of work hereunder at the beginning of each regular session."

Joint Resolution Amending the Act of July second, nineteen hundred and nine, governing the holding of civil service examinations.

[*Res. of March 27, 1918, No. —, — Stat. L. —.*]

[**Examinations — place of holding.**] That the Act of July second, nineteen hundred and nine (Thirty-sixth Statutes at Large, Numbered One), is hereby amended so as to permit the United States Civil Service Commission, during the period of the present war, to hold examinations of applicants for positions in the Government service in the District of Columbia, and to permit applicants from the several States and Territories of the United States to take said examinations in the said District of Columbia and elsewhere in the United States where examinations are usually held. Said examinations shall be permitted in addition to those required to be held by said Act of July second, nineteen hundred and nine. (Thirty-sixth Statutes at Large, Numbered One): *Provided*, That nothing herein shall be so construed as to abridge the existing law of apportionment or change the requirements of existing law as to legal residence and domicile of such applicants. [— Stat. L. —.]

For Act of July 2, 1909, ch. 2, § 7, see 1909 Supp. Fed. Stat. Ann. 716; 2 Fed. Stat. Ann. (2d ed.) 168.

[**SEC. 1.**] [**Employees of Civil Service Commission.**] * * * No detail of clerks or other employees from the executive departments or other Government establishments in the District of Columbia to the Civil Service Commission, for the performance of duty in the District of Columbia, shall be made for or during the fiscal year nineteen hundred and nineteen. The

Civil Service Commission shall, however, have power in case of emergency to transfer or detail any of its employees herein provided for to or from its office force, field force, or rural carrier examining board. [*— Stat. L. —.*]

This is from the Legislative, Executive and Judicial Appropriation Act of July 3, 1918, ch. —.

CLAIMS

Act of April 18, 1918, ch. —, 88.

Sec. 1. Damages Caused by American Forces Abroad — Presentment of Claims, 88.

2. Approval of Claims, 88.

3. Payment of Claims, 88.

4. Statute as Superseding Other Modes of Indemnity, 88.

Act of July 1, 1918, ch. —, 89.

Private Property of Inhabitants of European Country — Damages to or Loss — Adjustment, 89.

Act of July 9, 1918, ch. —, 89.

Chapter VI:

Claims for Property Lost in Military Service — Former Act Amended, 89.

Limitation of Liability, 90.

Determination of Value — Replacement — Commutation, 90.

Final Determination of Claim, 90.

Time of Making Claims, 90.

An Act To give indemnity for damages caused by American forces.

[*Act of April 18, 1918, ch.—, — Stat. L. —.*]

[**SEC. 1. [Damages caused by American forces abroad — presentment of claims.]** That claims of inhabitants of France or of any other European country not an enemy or ally of an enemy for damages caused by American military forces may be presented to any officer designated by the President, and when approved by such an officer shall be paid under regulations made by the Secretary of War. [*— Stat. L. —.*]

SEC. 2. [Approval of claims.] That claims under this statute shall not be approved unless they would be payable according to the law or practice governing the military forces of the country in which they occur. [*— Stat. L. —.*]

SEC. 3. [Payment of claims.] That hereafter appropriations for the incidental expenses of the Quartermaster Corps shall be available for paying the claims herein described. [*— Stat. L. —.*]

SEC. 4. [Statute as superseding other modes of indemnity.] That this statute does not supersede other modes of indemnity now in existence and does not diminish responsibility of any member of the military forces to the person injured or to the United States. [*— Stat. L. —.*]

[Private property of inhabitants of European country — damages to or loss — adjustment.] * * * That hereafter the Secretary of the Navy is authorized to consider, ascertain, adjust, determine, and pay the amounts due on all claims for damages to and loss of private property of inhabitants of any European country not an enemy or ally of an enemy when the amount of the claim does not exceed the sum of \$1,000, occasioned and caused by men in the naval service during the period of the present war, all payments in settlement of such claims to be made out of "Pay, Miscellaneous." [— *Stat. L.* —.]

This is from the Naval Appropriation Act of July 1, 1918, ch. —.

[Claims for property lost in military service — former act amended.] That the Act entitled "An Act to provide for the settlement of the claims of officers and enlisted men of the Army, for loss of private property destroyed in the military service of the United States," approved March third, eighteen hundred and eighty-five (chapter three hundred and thirty-five, Twenty-third Statutes, page three hundred and fifty), be, and the same is hereby, amended to read as follows:

"Sec. 1. That private property belonging to officers, enlisted men, and members of the Nurse Corps (female) of the Army, including all prescribed articles of equipment and clothing which they are required by law or regulations to own and use in the performance of their duties, and horses and equipment required by law or regulations to be provided by mounted officers, which since the fifth day of April, nineteen hundred and seventeen, has been or shall hereafter be lost, damaged, or destroyed in the military service shall be replaced, or the damage thereto or its value recouped to the owner as hereinafter provided, when such loss, damage, or destruction has occurred or shall hereafter occur in any of the following circumstances:

"First. When such loss or destruction was without fault or negligence on the part of the owner.

"Second. When such private property so lost or destroyed was shipped on board an unseaworthy vessel by order of an officer authorized to give such order or direct such shipment.

"Third. When it appears that such private property was so lost or destroyed in consequence of its owner having given his attention to the saving of property belonging to the United States which was in danger at the same time and in similar circumstances.

"Fourth. When during travel under orders the regulation allowance of baggage transferred by a common carrier is lost or damaged; but replacement or recoupment in these circumstances shall be limited to the extent of such loss or damage over and above the amount recoverable from said carrier.

"Fifth. When such private property is destroyed or captured by the enemy, or is destroyed to prevent its falling into the hands of the enemy, or is abandoned on account of lack of transportation or by reason of mili-

tary emergency requiring its abandonment, or is otherwise lost in the field during campaign.” [— *Stat. L.* —.]

This and the following four paragraphs of the text are from chapter VI of the Army Appropriation Act of July 9, 1918.

For the Act of March 3, 1885, ch. 335, see 2 Fed. Stat. Ann. 26; 2 Fed. Stat. Ann. (2d ed.) 205.

“ SEC. 2. [Limitation of liability.] That, except as to such property as by law or regulations is required to be possessed and used by officers, enlisted men, and members of the Nurse Corps (female), respectively, the liability of the Government under this chapter shall be limited to damage to or loss of such articles of personal property as the Secretary of War shall decide or declare to be reasonable, useful, necessary, and proper for officers, enlisted men, or members of the Nurse Corps (female), respectively, as the case may be, while in quarters, engaged in the public service, in the line of duty. [— *Stat. L.* —.]

“ SEC. 3. [Determination of value — replacement — commutation.] That the proper accounting officers of the Treasury be, and they are hereby, authorized and directed to examine into, ascertain and determine the value of the property lost, destroyed, captured, or abandoned as specified in the foregoing sections, or the amount of the damage thereto, as the case may be; and the amount of such value or damage so ascertained and determined shall be paid out of any money in the Treasury not otherwise appropriated: *Provided*, That in time of war or of operations during public disaster such property lost, destroyed, captured, or abandoned, or so damaged as to be unfit for service, shall be replaced in kind from Government property on hand, or adequate commutation given therefor when replacement in kind can not be made, or can not be made within a reasonable time, by the supply officer or quartermaster of the organization to which the person entitled thereto belongs or with which he is serving upon the order of the commanding officer thereof. [— *Stat. L.* —.]

“ SEC. 4. [Final determination of claim.] That the tender of replacement or of commutation or the determination made by the proper accounting officers of the Treasury upon a claim presented as provided for in the foregoing section, shall constitute a final determination of any claim cognizable under this chapter, and such claim shall not thereafter be reopened or considered. [— *Stat. L.* —.]

“ SEC. 5. [Time of making claims.] That no claim arising under this chapter shall be considered unless made within two years from the time that it accrued; except that when a claim accrues in time of war, or when war intervenes within two years after its accrual, such claim may be presented within two years after peace is established.” [— *Stat. L.* —.]

CLAYTON ACT

See TRADE COMBINATIONS AND TRUSTS.

COAL LANDS

See INDIANS; PUBLIC LANDS.

COAST AND GEODETIC SURVEY

Act of May 22, 1917, ch. —, 91.

Sec. 16. Vessels, Equipment, Stations and Personnel — Transfer to War or Navy Department — Officers — Appointments — Pay — Rank — Regulation, 91.

Act of July 1, 1918, ch. —, 92.

Sec. 1. Advances of Money to Chiefs of Parties — Supplies — Services, 92.

SEC. 16. [Vessels, equipment, stations and personnel — transfer to War or Navy Department — officers — appointments — pay — rank — regulation.] That the President is hereby authorized, whenever in his judgment a sufficient national emergency exists, to transfer to the service and jurisdiction of the War Department, or of the Navy Department, such vessels, equipment, stations, and personnel of the Coast and Geodetic Survey as he may deem to the best interest of the country, and after such transfer all expenses connected therewith shall be defrayed out of the appropriations for the department to which transfer is made: *Provided:* That such vessels, equipment, stations, and personnel shall be returned to the Coast and Geodetic Survey when such national emergency ceases, in the opinion of the President, and nothing in this Act shall be construed as transferring the Coast and Geodetic Survey or any of its functions from the Department of Commerce except in time of national emergency and to the extent herein provided: *Provided further,* That any of the personnel of the Coast and Geodetic Survey who may be transferred as herein provided shall, while under the jurisdiction of the War Department or Navy Department, have proper military status and shall be subject to the laws, regulations, and orders for the government of the Army or Navy, as the case may be, in so far as the same may be applicable to persons whose retention permanently in the military service of the United States is not contemplated by law: *And provided further,* That the President is authorized to appoint, by and with the advice and consent of the Senate, the field officers of the Coast and Geodetic Survey, who are now officially designated assistants and aids, as follows: Officers now designated assistants and receiving a salary of \$2,000 or more per annum shall be appointed hydrographic and geodetic engineers; officers now designated assistants and receiving a salary of \$1,200 or greater but less than \$2,000 per annum shall be appointed junior hydrographic and geodetic engineers; officers now designated aids shall be appointed aids: *Provided,* That no person shall be appointed aid or shall be promoted from aid to junior hydrographic and geodetic engineer or from junior hydrographic and geodetic engineer to hydrographic and geodetic engineer until after passing a satisfactory mental and physical examination conducted in accordance with regulations prescribed by the Secretary of

Commerce, except that the President is authorized to nominate for confirmation the assistants and aids in the service on the date of the passage of this Act.

Nothing in this Act shall reduce the total amount of pay and allowances they were receiving at the time of transfer. While actually employed in active service under direct orders of the War Department or of the Navy Department members of the Coast and Geodetic Survey shall receive the benefit of all provisions of laws relating to disability incurred in line of duty or loss of life.

When serving with the Army or Navy the relative rank shall be as follows:

Hydrographic and geodetic engineers receiving \$4,000 or more shall rank with and after colonels in the Army and captains in the Navy.

Hydrographic and geodetic engineers receiving \$3,000 or more but less than \$4,000 shall rank with and after lieutenant colonels in the Army and commanders in the Navy.

Hydrographic and geodetic engineers receiving \$2,500 or more but less than \$3,000 shall rank with and after majors in the Army and lieutenant commanders in the Navy.

Hydrographic and geodetic engineers receiving \$2,000 or more but less than \$2,500 shall rank with and after captains in the Army and lieutenants in the Navy.

Junior hydrographic and geodetic engineers shall rank with and after first lieutenants in the Army and lieutenants (junior grade) in the Navy.

Aids shall rank with and after second lieutenants in the Army and ensigns in the Navy.

And nothing in this Act shall be construed to affect or alter their rates of pay and allowances when not assigned to military duty as hereinbefore mentioned.

The Secretary of War, the Secretary of the Navy, and the Secretary of Commerce shall jointly prescribe regulations governing the duties to be performed by the Coast and Geodetic Survey in time of war, and for the co-operation of that service with the War and Navy Departments in time of peace in preparations for its duties in war, which regulations shall not be effective unless approved by each of the said Secretaries, and included therein may be rules and regulations for making reports and communications between the officers or bureaus of the War and Navy Departments and the Coast and Geodetic Survey. [— *Stat. L.* —.]

The foregoing section 16 is a part of an Act of May 22, 1917, ch. —, entitled "An Act to temporarily increase the commissioned and warrant and enlisted strength of the Navy and Marine Corps and for other purposes."

[SEC. 1.] [Advances of money to chiefs of parties — supplies — services.] * * * That advances of money from available appropriations hereafter may be made to the Coast and Geodetic Survey and by authority of the superintendent thereof to chiefs of parties, who shall give bond under such rules and regulations and in such sum as the Secretary of Commerce may direct, and accounts arising under such advances shall be rendered through and by the disbursing officer of the Coast and Geodetic

Survey to the Treasury Department as under advances heretofore made to chiefs of parties: *And provided further*, That hereafter the purchase of supplies or the procurement of services outside the District of Columbia may be made in the open market in the manner common among business men when the aggregate amount of the purchase does not exceed \$50. [*— Stat. L. —.*]

This is from the Sundry Civil Appropriation Act of July 1, 1918, ch. —.

COAST GUARD

Act of June 28, 1916, ch. 181, 93.

Coast Guard Station — Establishment in Louisiana, 93.

Act of Aug. 29, 1916, ch. 417, 94.

Operation of Coast Guard as Part of Navy — Personnel Subject to Navy Laws — Punishment for Offenses — Limitation, 94.

Reimbursement of Expenses When Paid by Navy Department, 94.

Precedence of Officers When Operating with Navy, 94.

Assignments of Personnel to Duty — Maintenance of Stations, etc., 94.

Construction of Vessels, 94.

Instruction of Officers and Men at Army and Navy Aviation Schools, 95.

Increased Pay for Aviation Duty — Number to be Detailed — Number of Third Lieutenants Increased — Restriction Repealed, 95.

Act of Aug. 29, 1916, ch. 418, 95.

Sec. 1. Protection of Uniform, 95.

Act of May 22, 1917, ch. —, 95.

Sec. 15. Increases of Pay, 95.

Act of July 1, 1918, ch. —, 96.

Sec. 1. Civilian Instructors — Pay and Allowances; Cadets — Pay and Allowances, 96.

Act of July 1, 1918, ch. —, 96.

Commissioned Line Officers and Engineer Officers — Promotion; Constructors — Promotion, 96.

Captain Commandant — Engineer in Chief — Commissioned Officers — Promotion, 96.

Superintendents — Rank, Pay and Allowance, 97.

Effect of Temporary Promotions, 97.

Duration of Promotions, 97.

Retirement, 98.

Officers on Duty Abroad — Pay and Allowances, 98.

Effect of Act, 98.

CROSS-REFERENCE

See *HEALTH AND QUARANTINE.*

An Act To establish a Coast Guard station on the coast of Louisiana, in the vicinity of Barataria Bay.

[*Act of June 28, 1916, ch. 181, 39 Stat. L. 239.*]

[**Coast guard station — establishment in Louisiana.**] That the Secretary of the Treasury be, and he is hereby, authorized to establish a Coast

Guard station on the coast of Louisiana in the vicinity of Barataria Bay, at such point as he may deem best. [39 Stat. L. 239.]

[Operation of Coast Guard as part of Navy — personnel subject to Navy laws — punishment for offenses — limitation.] * * * Whenever, in time of war, the Coast Guard operates as a part of the Navy in accordance with law, the personnel of that service shall be subject to the laws prescribed for the government of the Navy: *Provided*, That in the initiation, prosecution, and completion of disciplinary action, including remission and mitigation of punishments for any offense committed by any officer or enlisted man of the Coast Guard, the jurisdiction shall hereafter depend upon and be in accordance with the laws and regulations of the department having jurisdiction of the person of such offender at the various stages of such action: *Provided further*, That any punishment imposed and executed in accordance with the provisions of this section shall not exceed that to which the offender was liable at the time of the commission of his offense. [39 Stat. L. 600.]

The foregoing paragraph and the following six paragraphs of the text are from the Naval Appropriation Act of Aug. 29, 1916, ch. 417.

[Reimbursement of expenses when paid by Navy Department.] * * * Hereafter whenever, in accordance with law, the expenses of the Coast Guard are paid by the Navy Department, any naval appropriations from which payments are so made shall be reimbursed from available appropriations made by Congress for the expenses of the Coast Guard. [39 Stat. L. 600.]

See the note to the second preceding paragraph of the text.

[Precedence of officers when operating with Navy.] * * * Whenever the personnel of the Coast Guard, or any part thereof, is operating with the personnel of the Navy in accordance with law, precedence between commissioned officers of corresponding grades in the two services shall be determined by the date of commissions in those grades. [39 Stat. L. 600.]

See the note to the second preceding paragraph of the text.

[Assignments of personnel to duty — maintenance of stations, etc.] * * * Any commissioned or warrant officer, petty officer, or other enlisted man in the Coast Guard may be assigned to any duty which may be necessary for the proper conduct of the Coast Guard; and the Secretary of the Treasury in time of peace and the Secretary of the Navy in time of war may, in his discretion, man any Coast Guard station during the entire year, or any portion thereof, maintain any house of refuge as a Coast Guard station, and change, establish, and fix the limits of Coast Guard districts and divisions. [39 Stat. L. 601.]

See the note to the first paragraph of this Act, *supra*, this page.

[Construction of vessels.] * * * That the Secretary of the Navy, at the request of the Secretary of the Treasury, is hereby authorized to build

the vessels herein authorized, or any Coast Guard vessels hereafter authorized, at such navy yards as the Secretary of the Navy may designate. [39 Stat. L. 601.]

See the note to the first paragraph of this Act, *supra*, p. 94.

This proviso followed an appropriation for the construction of certain coast guard vessels.

[Instruction of officers and men at Army and Navy aviation schools.]

* * * At the request of the Secretary of the Treasury the Secretaries of War and Navy are authorized to receive officers and enlisted men of the Coast Guard for instruction in aviation at any aviation school maintained by the Army and Navy, and such officers and enlisted men shall be subject to the regulations governing such schools. [39 Stat. L. 601.]

See the note to the first paragraph of this Act, *supra*, p. 94.

[Increased pay for aviation duty — number to be detailed — number of third lieutenants increased — restriction repealed.] * * * Hereafter officers and enlisted men of the Coast Guard, when detailed for aviation duty, shall receive the same percentages of increases in pay and allowances as are now or may hereafter be prescribed by law for officers and men of the Navy detailed for aviation duty: *Provided*, That no more than a yearly average of fifteen commissioned officers and a total of forty warrant officers and enlisted men of the Coast Guard detailed for duty involving actual flying in aircraft shall receive any increase in pay or allowances by reason of such detail or duty: *Provided further*, That the number of third lieutenants and third lieutenants of engineers now authorized by law for the Coast Guard is hereby increased ten and five, respectively, and such portion of the Act approved August twenty-fourth, nineteen hundred and twelve, which provides that no additional appointments as cadets or cadet engineers shall be made in the Revenue-Cutter Service unless hereafter authorized by Congress is hereby revoked. [39 Stat. L. 601.]

See the note to the first paragraph of this Act, *supra*, p. 94.

For the provision of the Act of Aug. 24, 1912, ch. 355, mentioned in this paragraph, see 1914 Supp. Fed. Stat. Ann. 366; 2 Fed. Stat. Ann. (2d ed.) 312.

[SEC. 1.] [Protection of uniform.] That section one hundred and twenty-five of the Act entitled "An Act for further and more effectual provision for the national defense, and for other purposes," approved June third, nineteen hundred and sixteen, shall apply to the Coast Guard in the same manner as to the Army, Navy, and Marine Corps. [39 Stat. L. 649.]

This is from the Army Appropriation Act of Aug. 29, 1916, ch. 418.

For the Act of June 3, 1916, ch. 134, § 125, mentioned in the text, prohibiting the unauthorized wearing of the uniform of the Army, Navy, or Marine Corps, see WAR DEPARTMENT AND MILITARY ESTABLISHMENT, *post*.

[SEC. 15.] [Increases of pay.] * * * That during the continuance of the present war, warrant officers, petty officers and enlisted men in the United States Coast Guard shall receive the same rates of pay as are or may

hereafter be prescribed for corresponding grades or ratings and length of service in the Navy. [— *Stat. L.* —.]

This is a part of section 16 of the Act of May 22, 1917, ch. —, entitled "An Act to temporarily increase the commissioned and warrant and enlisted strength of the Navy and Marine Corps and for other purposes."

[SEC. 1.] **[Civilian instructors — pay and allowances; cadets — pay and allowances.]** * * * That a civilian instructor in the Coast Guard, after five years' service as such, shall have the pay and allowances of a second lieutenant, and after ten years of such service shall have the pay and allowances of a first lieutenant in the Coast Guard: *Provided further*, That cadets in the Coast Guard shall receive the same pay and allowances as are now or may hereafter be provided by law for midshipmen in the Navy. [— *Stat. L.* —.]

This is from the Sundry Civil Appropriation Act of July 1, 1918, ch. —.

[Commissioned line officers and engineer officers — promotion; constructors — promotion.] That the President of the United States be, and he is hereby, authorized during the period of the present war to promote temporarily, with the advice and consent of the Senate, commissioned line officers and engineer officers of the United States Coast Guard below the rank and grades of captain and captain of engineers to the ranks and grades of the Coast Guard not above captain and captain of engineers, respectively, without regard to number or length of service in rank or grade: *Provided*, That such temporary promotions may be to such rank and grade in the Coast Guard not above captain or captain of engineers as correspond to the rank and grade that may be attained in accordance with law, either permanently or temporarily, by line officers of the regular Navy of the same length of total service: *Provided further*, That constructors of the Coast Guard now authorized by law who shall have had as much total service in the Coast Guard as the officer of the Construction Corps of the Navy at the foot of the permanent or temporary list of those with the rank of lieutenant commanders may be temporarily promoted to the rank of captain of the Coast Guard: *And provided further*, That for the purposes of this Act service in the Coast Guard to be counted must have been continuous: *And provided further*, That nothing contained in this paragraph shall operate to disturb the relative position of officers in the Coast Guard with reference to precedence or promotion, but all such officers otherwise qualified shall be advanced in rank with or ahead of officers in the Coast Guard who were their juniors on the date of this Act.

The provisions of this and the following seven paragraphs of the text are from the Naval Appropriation Act of July 1, 1918, ch. —.

[Captain commandant — engineer in chief — commissioned officers — promotion.] That the President be, and he is hereby, authorized during

the period of the present war to promote temporarily, with the advice and consent of the Senate, the captain commandant of the Coast Guard to the rank of commodore in the Navy and brigadier general in the Army, and the engineer in chief of the Coast Guard to the rank of captain in the Navy and colonel in the Army, officers of the Coast Guard holding permanent commissions above the rank and grade of first lieutenant and first lieutenant of engineers as follows: Not to exceed two-fifths of the captains authorized by law, and not to exceed one-third of the captains of engineers authorized by law, to have the rank of senior captain in the Coast Guard; and not to exceed one-third the senior captains authorized by law, to have the rank of captain in the Navy and colonel in the Army: *Provided*, That the senior captains, captains, and captains of engineers to be temporarily promoted as herein provided, shall be selected as provided by law for promotion by selection in the Navy. [— *Stat. L.* —.]

See the note to the preceding paragraph of the text.

[**Superintendents — rank, pay and allowance.**] That during the period of the present war, the senior district superintendent, the three district superintendents next in order of seniority, the four district superintendents next below these three in order of seniority, and the junior five district superintendents shall have the rank, pay, and allowances of captain, first lieutenant, and second lieutenant, and third lieutenant in the Coast Guard, respectively. [— *Stat. L.* —.]

See the note to the first paragraph of this Act, *supra*, p. 96.

[**Effect of temporary promotions.**] That the permanent and probationary commissions of officers of the Coast Guard shall not be vacated by reason of the temporary promotions and advancements authorized by this Act, nor shall said officers be prejudiced in their relative lineal rank in regard to their promotion as provided for in existing law: *Provided*, That no officer who shall receive a temporary promotion or advancement under this Act shall be entitled to pay or allowances except under such promotion or advancement: *Provided further*, That upon the determination of the temporary promotions and advancements authorized by this Act, the officers so promoted and advanced shall revert to the rank and grade from which temporarily promoted or advanced, unless such officers in the meantime, in accordance with law, become entitled to promotion to a higher grade or rank in the permanent Coast Guard, in which case they shall revert to said higher grade or rank, and shall, after passing the prescribed examinations, be commissioned accordingly. [— *Stat. L.* —.]

See the note to the first paragraph of this Act, *supra*, p. 96.

[**Duration of promotions.**] That all temporary promotions and advancements authorized by this Act shall continue in force only until otherwise directed by the President, and not later than six months after the termination of the present war. [— *Stat. L.* —.]

See the note to the first paragraph of this Act, *supra*, p. 96.

[Retirement.] That any officer of the Coast Guard temporarily promoted or advanced in grade or rank in accordance with the provisions of this Act who shall be retired from active service under his permanent commission while holding such temporary grade or rank, except for physical disability incurred in line of duty, shall be placed on the retired list with the grade or rank to which his position in the permanent Coast Guard at the date of his retirement would entitle him. [*— Stat. L. —.*]

See the note to the first paragraph of this Act, *supra*, p. 96.

[Officers on duty abroad — pay and allowances.] That officers of the United States Coast Guard on sea duty or on shore duty beyond the continental limits of the United States during the period of the present war shall receive the same increase of pay and allowances in all respects as are now or may hereafter be provided by law for officers of the Navy of corresponding rank. [*— Stat. L. —.*]

See the note to the first paragraph of this Act, *supra*, p. 96.

[Effect of Act.] That nothing contained in this Act relating to the Coast Guard shall operate to reduce the rank, pay, or allowances that would have been received by any person in the Coast Guard except for the passage of this Act. [*— Stat. L. —.*]

See the note to the first paragraph of this Act, *supra*, p. 96.

COINAGE, MINTS, AND ASSAY OFFICES

Act of June 12, 1916, ch. 142, 99.

Gold Certificates — Issue for Stamped Bullion — Amount Limited — Former Act Amended, 99.

Act of April 23, 1918, ch. —, 99.

Sec. 1. Silver Dollars — Melting or Breaking up — Sale as Bullion — Retirement of Silver Certificates, 99.

2. Purchase of Silver from Mines to Replace Bullion Sold — Resale — Coinage, 100.

3. Purpose of Sale of Silver Bullion, 100.

4. Difference between Nominal and Face Value of Silver Dollars Melted — Reimbursement, 100.

5. Prevention of Contraction of Currency — Issuance of Federal Reserve Bank Notes — Security, 101.

6. Retirement of Federal Reserve Bank Notes, 101.

7. Tax on Federal Reserve Bank Notes — Adjustment, 101. —

8. Existing Provisions of Law as Applicable to Federal Reserve Bank Notes Issued, 101.

9. Continuance of Certain Existing Statutory Provisions, 102.

Act of June 1, 1918, ch. —, 102.

Sec. 1. Illinois Fifty Cent Pieces — Coinage Authorized, 102.

2. Application of Laws, 102.

An Act To amend section six of an Act to define and fix the standard of value, to maintain the parity of all forms of money issued or coined by the United States, to refund the public debt, and for other purposes, approved March fourteenth, nineteen hundred, as amended by the Act of March second, nineteen hundred and eleven.

[*Act of June 12, 1916, ch. 142, 39 Stat. L. 225.*]

[**Gold certificates — issue for stamped bullion — amount limited — former Act amended.**] That section six of an Act to define and fix the standard of value, to maintain the parity of all forms of money issued or coined by the United States, to refund the public debt, and for other purposes, approved March fourteenth, nineteen hundred, as amended by the Act approved March second, nineteen hundred and eleven, be, and the same is hereby, further amended by striking from the last proviso of said section six the word "one-third" and inserting in lieu thereof the word "two-thirds," making the last proviso of said section six read as follows:

"*And provided further*, That the Secretary of the Treasury may, in his discretion, receive, with the Treasurer or any Assistant Treasurer of the United States, deposits of gold bullion bearing the stamp of the coinage mints of the United States, or the assay office in New York, certifying their weight, fineness, and value, in amounts of not less than \$1,000 in value, and issue gold certificates therefor of the description herein authorized. But the amount of gold bullion and foreign coin so held shall not at any time exceed two-thirds of the total amount of gold certificates at such time outstanding. And section fifty-one hundred and ninety-three of the revised Statutes of the United States is hereby repealed." [39 Stat. L. 225.]

For the Parity Act of March 14, 1900, ch. 41, § 6, amended by this Act, see 2 Fed. Stat. Ann. 131.

For the Amendatory Act of March 2, 1911, ch. 268, mentioned in this Act, see 1912 Supp. Fed. Stat. Ann. 37.

For said Parity Act of March 14, 1900, ch. 41, § 6, as amended by the Act of March 2, 1911, ch. 268, amended by this Act, see 2 Fed. Stat. Ann. (2d ed.) 349.

For R. S. sec. 5193, repealed by this Act, see 2 Fed. Stat. Ann. 133 note; 2 Fed. Stat. Ann. (2d ed.) 361 note.

An Act To conserve the gold supply of the United States; to permit the settlement in silver of trade balances adverse to the United States; to provide silver for subsidiary coinage and for commercial use; to assist foreign governments at war with the enemies of the United States; and for the above purposes to stabilize the price and encourage the production of silver.

[*Act of April 23, 1918, ch. —, — Stat. L. —.*]

[**SEC. 1.**] [**Silver dollars — melting or breaking up — sale as bullion — retirement of silver certificates.**] That the Secretary of the Treasury is hereby authorized from time to time to melt or break up and to sell as bullion not in excess of three hundred and fifty million standard silver dollars now or hereafter held in the Treasury of the United States. Any silver certificates which may be outstanding against such standard silver dollars so melted or broken up shall be retired at the rate of \$1 face amount

of such certificates for each standard silver dollar so melted or broken up. Sales of such bullion shall be made at such prices not less than \$1 per ounce of silver one thousand fine and upon such terms as shall be established from time to time by the Secretary of the Treasury. [— *Stat. L.* —.]

SEC. 2. [Purchase of silver from mines to replace bullion sold — resale — coinage.] That upon every such sale of bullion from time to time the Secretary of the Treasury shall immediately direct the Director of the Mint to purchase in the United States, of the product of mines situated in the United States and of reduction works so located, an amount of silver equal to three hundred and seventy-one and twenty-five hundredths grains of pure silver in respect of every standard silver dollar so melted or broken up and sold as bullion. Such purchases shall be made in accordance with the then existing regulations of the Mint and at the fixed price of \$1 per ounce of silver one thousand fine, delivered at the option of the Director of the Mint at New York, Philadelphia, Denver, or San Francisco. Such silver so purchased may be resold for any of the purposes hereinafter specified in section three of this Act, under rules and regulations to be established by the Secretary of the Treasury, and any excess of such silver so purchased over and above the requirements for such purposes, shall be coined into standard silver dollars or held for the purpose of such coinage, and silver certificates shall be issued to the amount of such coinage. The net amount of silver so purchased, after making allowance for all resales, shall not exceed at any one time the amount needed to coin an aggregate number of standard silver dollars equal to the aggregate number of standard silver dollars theretofore melted or broken up and sold as bullion under the provisions of this Act, but such purchases of silver shall continue until the net amount of silver so purchased, after making allowance for all resales, shall be sufficient to coin therefrom an aggregate number of standard silver dollars equal to the aggregate number of standard silver dollars theretofore so melted or broken up and sold as bullion. [— *Stat. L.* —.]

SEC. 3. [Purpose of sale of silver bullion.] That sales of silver bullion under authority of this Act may be made for the purpose of conserving the existing stock of gold in the United States, of facilitating the settlement in silver of trade balances adverse to the United States, of providing silver for subsidiary coinage and for commercial use, and of assisting foreign governments at war with the enemies of the United States. The allocation of any silver to the Director of the Mint for subsidiary coinage shall, for the purposes of this Act, be regarded as a sale or resale. [— *Stat. L.* —.]

SEC. 4. [Difference between nominal and face value of silver dollars melted — reimbursement.] That the Secretary of the Treasury is authorized, from any moneys in the Treasury not otherwise appropriated, to reimburse the Treasurer of the United States for the difference between the nominal or face value of all standard silver dollars so melted or broken up and the value of the silver bullion, at \$1 per ounce of silver one thousand fine, resulting from the melting or breaking up of such standard silver dollars. [— *Stat. L.* —.]

SEC. 5. [Prevention of contraction of currency — issuance of Federal reserve bank notes — security.] That in order to prevent contraction of the currency, the Federal reserve banks may be either permitted or required by the Federal Reserve Board, at the request of the Secretary of the Treasury, to issue Federal reserve bank notes, in any denominations (including denominations of \$1 and \$2) authorized by the Federal Reserve Board, in an aggregate amount not exceeding the amount of standard silver dollars melted or broken up and sold as bullion under authority of this Act, upon deposit as provided by law with the Treasurer of the United States as security therefor, of United States certificates of indebtedness, or of United States one-year gold notes. The Secretary of the Treasury may, at his option, extend the time of payment of any maturing United States certificates of indebtedness deposited as security for such Federal reserve bank notes for any period not exceeding one year at any one extension and may, at his option, pay such certificates of indebtedness prior to maturity, whether or not so extended. The deposit of United States certificates of indebtedness by Federal reserve banks as security for Federal reserve bank notes under authority of this Act shall be deemed to constitute an agreement on the part of the Federal reserve bank making such deposits that the Secretary of the Treasury may so extend the time of payment of such certificates of indebtedness beyond the original maturity date or beyond any maturity date to which such certificates of indebtedness may have been extended, and that the Secretary of the Treasury may pay such certificates in advance of maturity, whether or not so extended. [— *Stat. L.* —.]

SEC. 6. [Retirement of Federal reserve bank notes.] That as and when standard silver dollars shall be coined out of bullion purchased under authority of this Act, the Federal reserve banks shall be required by the Federal Reserve Board to retire Federal reserve bank notes issued under authority of section five of this Act, if then outstanding, in an amount equal to the amount of standard silver dollars so coined, and the Secretary of the Treasury shall pay off and cancel any United States certificates of indebtedness deposited as security for Federal reserve bank notes so retired. [— *Stat. L.* —.]

SEC. 7. [Tax on Federal reserve bank notes — adjustment.] That the tax on any Federal reserve bank notes issued under authority of this Act, secured by the deposit of United States certificates of indebtedness or United States one-year gold notes, shall be so adjusted that the net return on such certificates of indebtedness, or such one-year gold notes, calculated on the face value thereof, shall be equal to the net return on United States two per cent bonds, used to secure Federal reserve bank notes, after deducting the amount of the tax upon such Federal reserve bank notes so secured. [— *Stat. L.* —.]

SEC. 8. [Existing provisions of law as applicable to Federal reserve bank notes issued.] That except as herein provided, Federal reserve bank notes issued under authority of this Act, shall be subject to all existing provisions of law relating to Federal reserve bank notes. [— *Stat. L.* —.]

SEC. 9. [Continuance of certain existing statutory provisions.] That the provisions of Title VII of an Act approved June fifteenth, nineteen hundred and seventeen, entitled "An Act to punish acts of interference with the foreign relations, the neutrality, and the foreign commerce of the United States, to punish espionage, and better to enforce the criminal laws of the United States, and for other purposes," and the powers conferred upon the President by subsection (b) of section five of an Act approved October sixth, nineteen hundred and seventeen, known as the "Trading with the Enemy Act," shall, in so far as applicable to the exportation from or shipment from or taking out of the United States of silver coin or silver bullion, continue until the net amount of silver required by section two of this Act shall have been purchased as therein provided. [— *Stat. L.* —.]

The Act of June 15, 1917, title VII, is given *post*, p. 245.

The Act of Oct. 6, 1917, § 5, is given *post*, under TRADING WITH THE ENEMY.

An Act To authorize the coinage of fifty-cent pieces in commemoration of the one hundredth anniversary of the admission of the State of Illinois into the Union.

[*Act of June 1, 1918, ch. —, — Stat. L. —.*]

[SEC. 1.] [Illinois fifty-cent pieces — coinage authorized.] That, as soon as practicable, and in commemoration of the one hundredth anniversary of the admission of the State of Illinois into the Union as a State, there shall be coined at the mints of the United States, silver fifty-cent pieces to the number of one hundred thousand, such fifty-cent pieces to be of the standard troy weight, composition, diameter, device, and design, as shall be fixed by the Director of the Mint, with the approval of the Secretary of the Treasury, and said fifty-cent pieces shall be legal tender in any payment to the amount of their face value. [— *Stat. L.* —.]

SEC. 2. [Application of laws.] That all laws now in force relating to the subsidiary silver coins of the United States and the coining or striking of the same, regulating and guarding the process of coinage, providing for the purchase of material, and for the transportation, distribution, and redemption of the coins, for the prevention of debasement or counterfeiting, for security of the coin, or for any other purpose, whether said laws are penal or otherwise, shall, so far as applicable, apply to the coinage herein authorized: *Provided*, That the Government shall not be subject to the expense of making the necessary dies and other preparations for this coinage. [— *Stat. L.* —.]

COMMERCE

See CRIMINAL LAW; IMPORTS AND EXPORTS; INTERSTATE COMMERCE; SHIPPING AND NAVIGATION.

COMMERCE DEPARTMENT

Act of May 10, 1916, ch. 117, 103.

Sec. 1. Division of Cotton and Tobacco Statistics — Information for Tobacco Reports How Obtainable — Compensation of Special Agents, 103.

Commercial Attachés, 103.

Act of July 3, 1918, ch. —, 103.

Sec. 1. Advertisements for Proposals — Exceptions, 103.

[SEC. 1.] [Division of cotton and tobacco statistics — information for tobacco reports how obtainable — compensation of special agents.] * * *

That hereafter there shall be in the official organization of the bureau a separate, distinct, and independent division called the Division of Cotton and Tobacco Statistics: *Provided further, That hereafter* the Director of the Census may procure the information for the tobacco reports required by this Act and the Act approved April thirtieth, nineteen hundred and twelve, by mail or by special agents or by other employees of the Bureau of the Census: *Provided further, That* the compensation of not to exceed five special agents provided for in this paragraph may be fixed at a rate not to exceed \$8 per day. [39 Stat. L. 110.]

This and the following paragraph are from the Legislative, Executive, and Judicial Appropriation Act of May 10, 1916, ch. 117.

For the Act of April 30, 1912, ch. 102, mentioned in this paragraph, see 1914 Supp. Fed. Stat. Ann. 36; 2 Fed. Stat. Ann. (2d ed.) 53.

* * * **Commercial attachés:** For commercial attachés, to be appointed by the Secretary of Commerce, after examination to be held under his direction to determine their competency, and to be accredited through the State Department, whose duties shall be to investigate and report upon such conditions in the manufacturing industries and trade of foreign countries as may be of interest to the United States; and for one clerk to each of said commercial attachés to be paid a salary not to exceed \$1,500 each; and for necessary traveling and subsistence expenses, rent, purchase of reports, books of reference and periodicals, travel to and from the United States, exchange on official checks, and all other necessary expenses not included in the foregoing; such commercial attachés shall serve directly under the Secretary of Commerce and shall report directly to him. [39 Stat. L. 111.]

See the note to the preceding paragraph of this Act.

[SEC. 1.] [Advertisements for proposals — exceptions.] * * * During the present war section thirty-seven hundred and nine of the Revised Statutes of the United States shall not be construed to apply to any purchase or service rendered for the Department of Commerce when

the aggregate amount involved does not exceed the sum of \$25. [— *Stat. L.* —.]

This is from the Legislative, Executive, and Judicial Appropriation Act of July 3, 1918, ch. —.

For R. S. sec. 3709, relating to advertisements for proposals, see 6 Fed. Stat. Ann. 93; 8 Fed. Stat. Ann. (2d ed.) 336.

CONGRESS

Act of July 1, 1916, ch. 209, 104.

Sec. 1. Plates of Portraits — Delivery to Heirs or Legal Representatives, 104.

Act of March 3, 1917, ch. 163, 104.

Sec. 1. House of Representatives — Clerks, etc., 104.

6. Joint Committee on Printing — Membership — Powers and Duties When Congress Not in Session, 104.

CROSS-REFERENCES

Seeds to Congressmen, see AGRICULTURE.

False Personation of Member of Congress, see FALSE PERSONATION.

[SEC. 1.] [Plates of portraits — delivery to heirs or legal representatives.] * * * The Secretary of the Treasury is authorized to deliver the engraved plates of portraits that have been or may hereafter be made of deceased Senators and Representatives in Congress, to their heirs or legal representatives on such terms and conditions as he may determine. [39 *Stat. L.* 275.]

This is from the Sundry Civil Appropriations Act of July 1, 1916, ch. 209.

[SEC. 1.] [House of Representatives — clerks, etc.] * * * That all clerks to Members, Delegates, and Resident Commissioners shall be placed on the roll of employees of the House and be subject to be removed at the will of the Member, Delegate, or Resident Commissioner by whom they are appointed; and any Member, Delegate, or Resident Commissioner may appoint one or more clerks, who shall be placed on the roll as the clerk of such Member, Delegate, or Resident Commissioner making such appointments. [39 *Stat. L.* 1076.]

The foregoing paragraph and the following section 6 are from the Legislative, Executive, and Judicial Appropriation Act of March 3, 1917, ch. 163.

Provisions identical with those of this paragraph were made by the Act of May 10, 1916, ch. 117, § 1, 39 *Stat. L.* 72, and the subsequent Act of July 3, 1918, ch. —, § 1, — *Stat. L.* —.

SEC. 6. [Joint Committee on Printing — membership — powers and duties when Congress not in session.] That hereafter the members of the Joint Committee on Printing who are reelected to the succeeding Congress shall continue as members of said committee until their successors are

chosen: *Provided*, That the President of the Senate and the Speaker of the House of Representatives shall, on the last day of a Congress, appoint members of their respective Houses who have been elected to the succeeding Congress to fill any vacancies which may then be about to occur on said committee, and such appointees and the members of said committee who shall have been reelected shall continue until their successors are chosen. The Joint Committee on Printing shall, when Congress is not in session, exercise all the powers and duties devolving upon said committee as provided by law, the same as when Congress is in session. [39 Stat. L. 1121.]

See the note to the preceding paragraph of the text.

CONSPIRACY

See CRIMINAL LAW.

CONSULAR OFFICERS

See DIPLOMATIC AND CONSULAR OFFICERS.

CONTRACTS

See PUBLIC CONTRACTS.

COPYRIGHT

See TRADING WITH THE ENEMY.

CORPORATIONS

Act of April 5, 1918, ch. —, 107.

Title I.—*War Finance Corporation*, 107.

- Sec. 1. *Creation of Corporation — Name — Duration of Exercise of Powers*, 107.
2. *Capital Stock*, 107.
3. *Directors — Personnel — Number — Oath — Term — Vacancies — Quorum*, 107.
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- Sec. 8.** *Advances to Savings Institutions or Building and Loan Associations — Security — Rate of Interest*, 109.
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CROSS-REFERENCES

See **LABOR; SHIPPING AND NAVIGATION**.

An Act To provide further for the national security and defense, and, for the purpose of assisting in the prosecution of the war, to provide credits for industries and enterprises in the United States necessary or contributory to the prosecution of the war, and to supervise the issuance of securities and for other purposes.

[*Act of April 5, 1918, ch. —, — Stat. L. —.*]

TITLE I.—WAR FINANCE CORPORATION

[SEC. 1.] [Creation of corporation — name — duration of exercise of powers.] That the Secretary of the Treasury and four additional persons (who shall be the directors first appointed as hereinafter provided), are hereby created a body corporate and politic in deed and in law by the name, style, and title of the "War Finance Corporation" (herein called the Corporation), and shall have succession for a period of ten years: *Provided*, That in no event shall the Corporation exercise any of the powers conferred by this Act, except such as are incidental to the liquidation of its assets and the winding up of its affairs, after six months after the termination of the war, the date of such termination to be fixed by proclamation of the President of the United States. [*— Stat. L. —.*]

SEC. 2. [Capital stock.] That the capital stock of the Corporation shall be \$500,000,000, all of which shall be subscribed by the United States of America, and such subscription shall be subject to call upon the vote of three-fifths of the board of directors of the Corporation, with the approval of the Secretary of the Treasury, at such time or times as may be deemed advisable; and there is hereby appropriated, out of any money in the Treasury not otherwise appropriated, the sum of \$500,000,000, or so much thereof as may be necessary for the purpose of making payment upon such subscription when and as called. Receipts for payments by the United States of America for or on account of such stock shall be issued by the Corporation to the Secretary of the Treasury, and shall be evidence of stock ownership. [*— Stat. L. —.*]

SEC. 3. [Directors — personnel — numbers — oath — term — vacancies — quorum.] That the management of the Corporation shall be vested in a board of directors, consisting of the Secretary of the Treasury, who shall be chairman of the board, and four other persons, to be appointed by the President of the United States, by and with the advice and consent of the Senate. No director, officer, attorney, agent, or employee of the Corporation shall in any manner directly or indirectly, participate in the determination of any question affecting his personal interests, or the interests of any corporation, partnership, or association, in which he is directly or indirectly interested; and each director shall devote his time, not otherwise required by the business of the United States, principally to the business of the Corporation. Before entering upon his duties, each of the four directors so appointed, and each officer, shall take an oath faithfully to discharge the duties of his office. Nothing contained in this or any other Act shall be construed to prevent the appointment as a director of the Corporation of any officer or employee under the United States or of a director of a Federal reserve bank.

Of the four directors so appointed, the President of the United States

shall designate two to serve for two years, and two for four years; and thereafter each director so appointed shall serve for four years. Whenever a vacancy shall occur among the directors so appointed, the person appointed director to fill any such vacancy shall hold office for the unexpired term of the member whose place he is selected to fill. Any director shall be subject to removal by the President of the United States. Three members of the board of directors shall constitute a quorum for the transaction of business. [— *Stat. L.* —.]

SEC. 4. [Salaries of directors.] That the four directors of the Corporation appointed as hereinbefore provided shall receive annual salaries, payable monthly, of \$12,000. Any director receiving from the United States any salary or compensation for services shall not receive as salary from the Corporation any amount which, together with any salary or compensation received from the United States, would make the total amount paid to him by the United States and by the Corporation exceed \$12,000. [— *Stat. L.* —.]

SEC. 5. [Office of corporation — location — branch offices.] That the principal office of the Corporation shall be located in the District of Columbia, but there may be established agencies or branch offices in any city or cities of the United States under rules and regulations prescribed by the board of directors. [— *Stat. L.* —.]

SEC. 6. [Powers and duties.] That the Corporation shall be empowered and authorized to adopt, alter, and use a corporate seal; to make contracts; to purchase or lease and hold or dispose of such real estate as may be necessary for the prosecution of its business; to sue and be sued; to complain and defend in any court of competent jurisdiction, State or Federal; to appoint, by its board of directors, and fix the compensation of such officers, employees, attorneys, and agents as are necessary for the transaction of the business of the Corporation, to define their duties, require bonds of them and fix the penalties thereof, and to dismiss at pleasure such officers, employees, attorneys, and agents; and to prescribe, amend, and repeal, by its board of directors, subject to the approval of the Secretary of the Treasury, by-laws regulating the manner in which its general business may be conducted and the privileges granted to it by law may be exercised and enjoyed, and prescribing the powers and duties of its officers and agents. [— *Stat. L.* —.]

SEC. 7. [Advances to banks and trust companies — power to make — amount — security.] That the Corporation shall be empowered and authorized to make advances, upon such terms, not inconsistent herewith, as it may prescribe, for periods not exceeding five years from the respective dates of such advances:

(1) To any bank, banker, or trust company, in the United States, which shall have made after April sixth, nineteen hundred and seventeen, and which shall have outstanding, any loan or loans to any person, firm, corporation, or association, conducting an established and going business in the United States, whose operations shall be necessary or contributory to the prosecution of the war, and evidenced by a note or notes, but no such

advance shall exceed seventy-five per centum of the face value of such loan or loans; and

(2) To any bank, banker, or trust company, in the United States, which shall have rendered financial assistance, directly or indirectly, to any such person, firm, corporation, or association by the purchase after April sixth, nineteen hundred and seventeen, of its bonds or other obligations, but no such advance shall exceed seventy-five per centum of the value of such bonds or other obligations at the time of such advance, as estimated and determined by the board of directors of the Corporation.

All advances shall be made upon the promissory note or notes of such bank, banker, or trust company, secured by the notes, bonds, or other obligations, which are the basis of any such advance by the Corporation, together with all the securities, if any, which such bank, banker, or trust company may hold as collateral for such notes, bonds, or other obligations.

The Corporation shall, however, have power to make advances (a) up to one hundred per centum of the face value of any such loan made by any such bank, banker, or trust company to any such person, firm, corporation, or association, and (b) up to one hundred per centum of the value at the time of any such advance (as estimated and determined by the board of directors of the Corporation) of such bonds or other obligations by the purchase of which financial assistance shall have been rendered to such person, firm, corporation, or association: *Provided*, That every such advance shall be secured in the manner described in the preceding part of this section, and in addition thereto by collateral security, to be furnished by the bank, banker, or trust company, of such character as shall be prescribed by the board of directors, of a value, at the time of such advance (as estimated and determined by the board of directors of the Corporation), equal to at least thirty-three per centum of the amount advanced by the Corporation. The Corporation shall retain power to require additional security at any time.

SEC. 8. [Advances to savings institutions or building and loan associations — security — rate of interest.] That the Corporation shall be empowered and authorized to make advances from time to time, upon such terms, not inconsistent herewith, as it may prescribe, for periods not exceeding one year, to any savings bank, banking institution or trust company, in the United States, which receives savings deposits, or to any building and loan association in the United States, on the promissory note or notes of the borrowing institution, whenever the Corporation shall deem such advances to be necessary or contributory to the prosecution of the war or important in the public interest: *Provided*, That such note or notes shall be secured by the pledge of securities of such character as shall be prescribed by the board of directors of the Corporation, the value of which, at the time of such advance (as estimated and determined by the board of directors of the Corporation) shall be equal in amount to at least one hundred and thirty-three per centum of the amount of such advance. The rate of interest charged on any such advance shall not be less than one per centum per annum in excess of the rate of discount for ninety-day commercial paper prevailing at the time of such advance at the Federal reserve bank of the district in which the borrowing institution is located, but such rate of interest shall in no case be greater than the

average rate receivable by the borrowing institution on its loans and investments made during the six months prior to the date of the advance, except that where the average rate so receivable by the borrowing institution is less than such rate of discount for ninety-day commercial paper the rate of interest on such advance shall be equal to such rate of discount. The Corporation shall retain power to require additional security at any time. [— *Stat. L.* —.]

SEC. 9. [Advances to person, firm, corporation or association — amount — rate of interest.] That the Corporation shall be empowered and authorized, in exceptional cases, to make advances directly to any person, firm, corporation, or association, conducting an established and going business in the United States, whose operations shall be necessary or contributory to the prosecution of the war (but only for the purpose of conducting such business in the United States and only when in the opinion of the board of directors of the Corporation such person, firm, corporation, or association is unable to obtain funds upon reasonable terms through banking channels or from the general public), for periods not exceeding five years from the respective dates of such advances, upon such terms, and subject to such rules and regulations as may be prescribed by the board of directors of the Corporation. In no case shall the aggregate amount of the advances made under this section exceed at any one time an amount equal to twelve and one-half per centum of the sum of (1) the authorized capital stock of the Corporation plus (2) the aggregate amount of bonds of the Corporation authorized to be outstanding at any one time when the capital stock is fully paid in. Every such advance shall be secured by adequate security of such character as shall be prescribed by the board of directors of a value at the time of such advance (as estimated and determined by the board of directors), equal to (except in case of an advance made to a railroad in the possession and control of the President, for the purpose of making additions, betterments or road extensions to such railroad) at least one hundred and twenty-five per centum of the amount advanced by the Corporation. The Corporation shall retain power to require additional security at any time. The rate of interest charged on any such advance shall not be less than one per centum per annum in excess of the rate of discount for ninety-day commercial paper prevailing at the time of such advance at the Federal reserve bank of the district in which the borrower is located. [— *Stat. L.* —.]

SEC. 10. [Aggregate amount of advances under this title.] That in no case shall the aggregate amount of the advances made under this title to any one person, firm, corporation, or association exceed at any one time an amount equal to ten per centum of the authorized capital stock of the Corporation, but this section shall not apply in the case of an advance made to a railroad in the possession and control of the President, for the purpose of making additions, betterments or road extensions to such railroad. [— *Stat. L.* —.]

SEC. 11. [Power to deal in bonds and obligations of United States.] That the Corporation shall be empowered and authorized to subscribe for, acquire, and own, buy, sell, and deal in bonds and obligations of the

United States issued or converted after September twenty-fourth, nineteen hundred and seventeen, to such extent as the board of directors, with the approval of the Secretary of the Treasury, may from time to time determine. [— *Stat. L.* —.]

SEC. 12. [Issuance of own bonds — power — amount — maturity — rate of interest — how secured — issuances for advances — sale — payment in foreign moneys.] That the Corporation shall be empowered and authorized to issue and have outstanding at any one time its bonds in an amount aggregating not more than six times its paid-in capital, such bonds to mature not less than one year nor more than five years from the respective dates of issue, and to bear such rate or rates of interest, and may be redeemable before maturity at the option of the Corporation, as may be determined by the board of directors, but such rate or rates of interest shall be subject to the approval of the Secretary of the Treasury. Such bonds shall have a first and paramount floating charge on all the assets of the Corporation, and the Corporation shall not at any time mortgage or pledge any of its assets. Such bonds may be issued at not less than par in payment of any advances authorized by this title, or may be offered for sale publicly or to any individual, firm, corporation, or association, at such price or prices as the board of directors, with the approval of the Secretary of the Treasury, may determine.

Upon such terms not inconsistent herewith as may be determined from time to time by the board of directors, with the approval of the Secretary of the Treasury, at or before the issue thereof, any of such bonds may be issued payable in any foreign money or foreign moneys, or issued payable at the option of the respective holders thereof either in dollars or in any foreign money or foreign moneys at such fixed rate of exchange as may be stated in any such bonds. For the purpose of determining the amount of bonds issued payable in any foreign money or foreign moneys the dollar equivalent shall be determined by the par of exchange at the date of issue thereof, as estimated by the Director of the Mint and proclaimed by the Secretary of the Treasury in pursuance of the provisions of section twenty-five of the Act entitled "An Act to reduce taxation, to provide revenue for the Government, and for other purposes," approved August twenty-seventh, eighteen hundred and ninety-four. [— *Stat. L.* —.]

For Act of Aug. 27, 1894, § 26, see *Fed. Stat. Ann.* 143; 2 *Fed. Stat. Ann.* (2d ed.) 368.

SEC. 13. [Bonds of Corporation as securities in Federal reserve bank transactions.] That the Federal reserve banks shall be authorized, subject to the maturity limitations of the Federal reserve Act and to regulations of the Federal Reserve Board, to discount the direct obligations of member banks secured by such bonds of the Corporation and to rediscount eligible paper secured by such bonds and indorsed by a member bank. No discount or rediscount under this section shall be granted at a less interest charge than one per centum per annum above the prevailing rates for eligible commercial paper of corresponding maturity.

Any Federal reserve bank may, with the approval of the Federal Reserve Board, use any obligation or paper so acquired for any purpose for which it is authorized to use obligations or paper secured by bonds or notes of

the United States not bearing the circulation privilege: *Provided, however,* That whenever Federal reserve notes are issued against the security of such obligations or paper the Federal Reserve Board may make a special interest charge on such notes, which, in the discretion of the Federal Reserve Board, need not be applicable to other Federal reserve notes which may from time to time be issued and outstanding. All provisions of law, not inconsistent herewith, in respect to the acquisition by any Federal reserve bank of obligations or paper secured by such bonds or notes of the United States, and in respect to Federal reserve notes issued against the security of such obligations or paper, shall extend, in so far as applicable, to the acquisition of obligations or paper secured by the bonds of the Corporation and to the Federal reserve notes issued against the security of such obligations or paper. [— *Stat. L.* —.]

SEC. 14. [Business of Corporation when commenced.] That the Corporation shall not exercise any of the powers granted by this title or perform any business except such as is incidental and necessarily preliminary to its organization until it has been authorized by the President of the United States to commence business under the provisions of this title. [— *Stat. L.* —.]

SEC. 15. [Earnings — Federal reserve banks as depositaries and fiscal agents — liquidation of assets — winding up affairs.] That all net earnings of the Corporation not required for its operation shall be accumulated as a reserve fund until such time as the Corporation liquidates under the terms of this title. Such reserve fund shall, upon the direction of the board of directors, with the approval of the Secretary of the Treasury, be invested in bonds and obligations of the United States, issued or converted after September twenty-fourth, nineteen hundred and seventeen, or upon like direction and approval may be deposited in member banks of the Federal Reserve System, or in any of the Federal reserve banks, or be used from time to time, as well as any other funds of the Corporation, in the purchase or redemption of any bonds issued by the Corporation. The Federal reserve banks are hereby authorized to act as depositaries for and as fiscal agents of the Corporation in the general performance of the powers conferred by this title. Beginning six months after the termination of the war, the date of such termination to be fixed by a proclamation of the President of the United States, the directors of the Corporation shall proceed to liquidate its assets and to wind up its affairs, but the directors of the Corporation, in their discretion, may, from time to time, prior to such date, sell and dispose of any securities or other property acquired by the Corporation. Any balance remaining after the payment of all its debts shall be paid into the Treasury of the United States as miscellaneous receipts, and thereupon the Corporation shall be dissolved. [— *Stat. L.* —.]

SEC. 16. [Bonds of Corporation — exemption from taxation.] That any and all bonds issued by the Corporation shall be exempt, both as to principal and interest, from all taxation now or hereafter imposed by the United States, any State, or any of the possessions of the United States, or by any local taxing authority, except (a) estate or inheritance taxes,

and (b) graduated additional income taxes, commonly known as surtaxes, and excess-profits and war-profits taxes, now or hereafter imposed by the United States, upon the income or profits of individuals, partnerships, corporations, or associations. The interest on an amount of such bonds the principal of which does not exceed in the aggregate \$5,000, owned by any individual, partnership, corporation, or association, shall be exempt from the taxes referred to in clause (b). The Corporation, including its franchise and the capital and reserve or surplus thereof, and the income derived therefrom, shall be exempt from all taxation now or hereafter imposed by the United States, any State, or any of the possessions of the United States, or by any local taxing authority, except that any real property of the Corporation shall be subject to State, county, or municipal taxes to the same extent, according to its value, as other real property is taxed. [— *Stat. L.* —.]

SEC. 17. [Liability of United States for obligations of Corporation.] That the United States shall not be liable for the payment of any bond or other obligation or the interest thereon issued or incurred by the Corporation, nor shall it incur any liability in respect of any act or omission of the Corporation. [— *Stat. L.* —.]

SEC. 18. [Crimes and offenses.] That whoever (1) makes any statement, knowing it to be false, for the purpose of obtaining for himself or for any other person, firm, corporation, or association any advance under this title, shall be punished by a fine of not more than \$10,000, or by imprisonment for not more than five years, or both.

Whoever willfully overvalues any security by which any such advance is secured, shall be punished by a fine of not more than \$5,000, or by imprisonment for not more than two years, or both.

Whoever (1) falsely makes, forges, or counterfeits any bond, coupon, or paper in imitation of or purporting to be in imitation of a bond or coupon issued by the Corporation; or (2) passes, utters, or publishes, or attempts to pass, utter, or publish, any false, forged, or counterfeited bond, coupon, or paper purporting to be issued by the Corporation, knowing the same to be falsely made, forged, or counterfeited; or (3) falsely alters any such bond, coupon, or paper; or (4) passes, utters, or publishes as true any falsely altered or spurious bond, coupon, or paper issued or purporting to have been issued by the Corporation, knowing the same to be falsely altered or spurious, shall be punished by a fine of not more than \$10,000, or by imprisonment for not more than five years, or both.

Whoever, being connected in any capacity with the Corporation, (1) embezzles, abstracts, or willfully misapplies any moneys, funds, or credits thereof, or (2) with intent to defraud the Corporation or any other company, body politic or corporate, or any individual, or to deceive any officer of the Corporation, (a) makes any false entry in any book, report, or statement of the Corporation, or (b) without authority from the directors draws any order or assigns any note, bond, draft, mortgage, judgment, or decree thereof, shall be punished by a fine of not more than \$10,000, or by imprisonment for not more than five years, or both.

The Secretary of the Treasury is hereby authorized to direct and use the

Secret Service Division of the Treasury Department to detect, arrest, and deliver into custody of the United States marshal having jurisdiction any person committing any of the offenses punishable under this section. [— *Stat. L.* —.]

SEC. 19. [Reports of Corporation to Congress.] That the Corporation shall file quarterly reports with the Secretary of the Senate and with the Clerk of the House of Representatives, stating as of the first day of each month of the quarter just ended (1) the total amount of capital paid in, (2) the total amount of bonds issued, (3) the total amount of bonds outstanding, (4) the total amount of advances made under each of sections seven, eight, and nine, (5) a list of the classes and amount of securities taken under each of such sections, (6) the total amount of advances outstanding under each of sections seven, eight, and nine, and (7) such other information as may be hereafter required by either House of Congress.

The Corporation shall make a report to Congress on the first day of each regular session, including a detailed statement of receipts and expenditures. [— *Stat. L.* —.]

SEC. 20. [R. S. sec. 5202 amended.]

This section amends R. S. sec. 5202, which limits the indebtedness to be incurred by national banking associations. The section is put under the title **NATIONAL BANKS**, and adds to R. S. sec. 5202 the sixth paragraph reading as follows: "Sixth. Liabilities incurred under the provisions of the War Finance Corporation Act."

TITLE II.—CAPITAL ISSUES COMMITTEE.

SEC. 200. [Creation of committee—membership—term of office—salaries.] That there is hereby created a committee to be known as the "Capital Issues Committee," hereinafter called the Committee, and to be composed of seven members to be appointed by the President of the United States, by and with the advice and consent of the Senate. At least three of the members shall be members of the Federal Reserve Board.

No member, officer, attorney, agent, or employee of the Committee shall in any manner, directly or indirectly, participate in the determination of any question affecting his personal interests, or the interest of any corporation, partnership, or association in which he is directly or indirectly interested. Before entering upon his duties, each member and officer shall take an oath faithfully to discharge the duties of his office. Nothing contained in this or any other Act shall be construed to prevent the appointment as a member of the Committee, of any officer or employee under the United States or of a director of a Federal reserve bank.

The terms during which the several members of the Committee shall respectively hold office shall be determined by the President of the United States, and the compensation of the several members of the Committee who are not members of the Federal Reserve Board shall be \$7,500 per annum, payable monthly, but if any such member receives any other compensation from any office or employment under the United States the amount so received shall be deducted from such salary, and if such other compensation is \$7,500 or more, such member shall receive no salary as a member of the Committee. Any member shall be subject to removal by

the President of the United States. The President shall designate one of the members as chairman, but any subsequent vacancy in the chairmanship shall be filled by the Committee. Four members of the Committee shall constitute a quorum for the transaction of business. [— *Stat. L.* —.]

SEC. 201. [Employees — appointment — compensation — suspension of civil service rules.] That the Committee may employ and fix the compensation of such officers, attorneys, agents, and other employees as may be deemed necessary to conduct its business, who shall be appointed without regard to the provisions of the Act entitled "An Act to regulate and improve the civil service of the United States," approved January sixteenth, eighteen hundred and eighty-three (volume twenty-two, United States Statutes at Large, page four hundred and three), and amendments thereto or any rules or regulations made in pursuance thereof. No such officer, attorney, agent, employee shall receive more compensation than persons performing services of like or similar character under the Federal Reserve Board. [— *Stat. L.* —.]

For Act of Jan. 16, 1883, see 1 Fed. Stat. Ann. 809; 2 Fed. Stat. Ann. (2d ed.) 155.

SEC. 202. [Expenses of Committee — officers — place of exercising powers.] That all the expenses of the Committee, including all necessary expenses for transportation incurred by the members or by its officers, attorneys, agents, or employees under its orders in making an investigation or upon official business in any other places than at their respective headquarters, shall be allowed and paid on the presentation of itemized vouchers therefor approved by the chairman.

The Committee may rent suitable offices for its use, and purchase such furniture, equipment, and supplies as may be necessary, but shall not expend more than \$10,000 annually for offices in the District of Columbia.

The principal office of the Committee shall be in the District of Columbia, but it may meet and exercise all its powers at any other place. The Committee may, by one or more of its members, or by such agents as it may designate, prosecute any inquiry necessary to its duties in any part of the United States. [— *Stat. L.* —.]

SEC. 203. [Powers — control over issuance of securities — limitations — effect of approval of securities on their validity.] That the Committee may, under rules and regulations to be prescribed by it from time to time, investigate, pass upon, and determine whether it is compatible with the national interest that there should be sold or offered for sale or for subscription any issue, or any part of any issue, of securities hereafter issued by any person, firm, corporation, or association, the total or aggregate par or face value of which issue and any other securities issued by the same person, firm, corporation, or association since the passage of this Act is in excess of \$100,000. Shares of stock of any corporation or association without nominal or par value shall for the purpose of this section be deemed to be of the par value of \$100 each. Any securities which upon the date of the passage of this Act are in the possession or control of the corporation, association, or obligor issuing the same shall be deemed to have been issued after the passage of this Act within the meaning hereof.

Nothing in this title shall be construed to authorize such Committee to pass upon (1) any borrowing by any person, firm, corporation, or association in the ordinary course of business as distinguished from borrowing for capital purposes, (2) the renewing or refunding of indebtedness existing at the time of the passage of this Act, (3) the resale of any securities the sale or offering of which the Committee has determined to be compatible with the national interest, (4) any securities issued by any railroad corporation the property of which may be in the possession and control of the President of the United States, or (5) any bonds issued by the War Finance Corporation.

Nothing done or omitted by the Committee hereunder shall be construed as carrying the approval of the Committee or of the United States of the legality, validity, worth, or security of any securities. [— *Stat. L. —*.]

SEC. 204. [Appropriation to defray expenses.] That there is hereby appropriated out of any money in the Treasury not otherwise appropriated, for the remainder of the fiscal year ending June thirtieth, nineteen hundred and eighteen, and the fiscal year ending June thirtieth, nineteen hundred and nineteen, the sum of \$200,000 for the purpose of defraying the expenses of the establishment and maintenance of the Committee, including the payment of the salaries and rents herein authorized. [— *Stat. L. —*.]

SEC. 205. [Report of Committee to Congress.] That the Committee shall make a report to Congress on the first day of each regular session, including a detailed statement of receipts and expenditures, and also including the names of all officers and employees and the salary paid to each. [— *Stat. L. —*.]

SEC. 206. [Continuance in effect of title.] That this title shall continue in effect until, but not after, the expiration of six months after the termination of the war, the date of such termination to be determined by a proclamation of the President of the United States, but the President may at any time by proclamation declare that this title is no longer necessary, and thereupon it shall cease to be in effect. [— *Stat. L. —*.]

TITLE III.—MISCELLANEOUS.

SEC. 300. [Violations of provisions of Act.] That whoever willfully violates any of the provisions of this Act, except where a different penalty is provided in this Act, shall, upon conviction in any court of the United States of competent jurisdiction, be fined not more than \$10,000 or imprisoned for not more than one year, or both; and whoever knowingly participates in any such violation, except where a different penalty is provided in this Act, shall be punished by a fine or imprisonment, or both. [— *Stat. L. —*.]

SEC. 301. [Stamp taxes — notes secured by United States obligations.]

This section will be found under the title INTERNAL REVENUE, *infra*, p. 374.

SEC. 302. [Invalidity of part of Act — effect as to remainder.] That if any clause, sentence, paragraph, or part of this Act shall, for any reason, be adjudged by any court of competent jurisdiction to be invalid, or, in case any court of competent jurisdiction shall adjudge to be invalid any provisions hereof in respect of any class or classes of securities, such judgment shall not affect, impair, or invalidate the remainder of this Act, but shall be confined in its operation to the clause, sentence, paragraph, part, or subject matter of this Act directly involved in the controversy in which such judgment shall have been rendered. [— *Stat. L.* —.]

SEC. 303. [“Securities” as used in Act defined.] That the term “securities,” as used in this Act, includes stocks, shares of stock, bonds, debentures, notes, certificates of indebtedness, and other obligations. [— *Stat. L.* —.]

SEC. 304. [Right to amend, alter or repeal.] That the right to amend, alter or repeal this Act is hereby expressly reserved. [— *Stat. L.* —.]

SEC. 305. [Short title of Act.] That the short title of this Act shall be the “War Finance Corporation Act.” [— *Stat. L.* —.]

SEC. 306. [Repeal of inconsistent statutory provisions.] That all provisions of any Act or Acts inconsistent with the provisions of this Act are hereby repealed. [— *Stat. L.* —.]

COSTS

Act of July 1, 1918, ch. —, 117.

Sec. 1. Seamen — Courts — Security for Fees and Costs, 117. ¶

[**SEC. 1.] [Seamen — courts — security for fees and costs.] • • •** That courts of the United States, including appellate courts, hereafter shall be open to seamen, without furnishing bonds or prepayment of or making deposit to secure fees or costs, for the purpose of entering and prosecuting suit or suits in their own name and for their own benefit for wages or salvage and to enforce laws made for their health and safety. [— *Stat. L.* —.]

This is from the Sundry Civil Appropriation Act of July 1, 1918, ch. —. Similar provisions have appeared in like Acts for preceding years.

Costs in appellate courts.— This section does not apply to appellate courts. *Ex p. Adu*, 247 U. S. 27, 38 S. Ct. 447, 62 U. S. (L. ed.) 602; *The Nigretia*, 249 Fed. 348.

Alien seamen are included in this section. *The Memphian*, (D. C. Mass. 1917) 245 Fed. 484.

COTTON

Cotton Futures Act, see INTERNAL REVENUE.

Cotton Statistics, see CENSUS; COMMERCE DEPARTMENT.

COUNTERFEITING

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[*Act of June 15, 1917, ch. —, — Stat. L. —.*]

TITLE I.

ESPIONAGE.

SEC. 1. [Obtaining information respecting national defense — photographs, etc.] That (a) whoever, for the purpose of obtaining information respecting the national defense with intent or reason to believe that the information to be obtained is to be used to the injury of the United States, or to the advantage of any foreign nation, goes upon, enters, flies over, or otherwise obtains information concerning any vessel, aircraft, work of defense, navy yard, naval station, submarine base, coaling station, fort, battery, torpedo station, dockyard, canal, railroad, arsenal, camp, factory, mine, telegraph, telephone, wireless, or signal station, building, office, or other place connected with the national defense, owned or constructed, or in progress of construction by the United States or under the control of the United States, or of any of its officers or agents, or within the exclusive jurisdiction of the United States, or any place in which any vessel, aircraft, arms, munitions, or other materials or instruments for use in time of war are being made, prepared, repaired, or stored, under any contract or agreement with the United States, or with any person on behalf of the United States, or otherwise on behalf of the United States, or any prohibited place within the meaning of section six of this title: or (b) whoever for the purpose aforesaid, and with like intent or reason to believe, copies, takes, makes,

or obtains, or attempts, or induces or aids another to copy, take, make, or obtain, any sketch, photograph, photographic negative, blue print, plan, map, model, instrument, appliance, document, writing, or note of anything connected with the national defense; or (c) whoever, for the purpose aforesaid, receives or obtains or agrees or attempts or induces or aids another to receive or obtain from any person, or from any source whatever, any document, writing, code book, signal book, sketch, photograph, photographic negative, blue print, plan, map, model, instrument, appliance, or note, of anything connected with the national defense, knowing or having reason to believe at the time he receives or obtains, or agrees or attempts or induces or aids another to receive or obtain it, that it has been or will be obtained, taken, made or disposed of by any person contrary to the provisions of this title; or (d) whoever, lawfully or unlawfully having possession of, access to, control over, or being intrusted with any document, writing, code book, signal book, sketch, photograph, photographic negative, blue print, plan, map, model, instrument, appliance, or note relating to the national defense, willfully communicates or transmits or attempts to communicate or transmit the same to any person not entitled to receive it, or willfully retains the same and fails to deliver it on demand to the officer or employee of the United States entitled to receive it; or (e) whoever, being intrusted with or having lawful possession or control of any document, writing, code book, signal book, sketch, photograph, photographic negative, blue print, plan, map, model, note, or information, relating to the national defense, through gross negligence permits the same to be removed from its proper place of custody or delivered to anyone in violation of his trust, or to be lost, stolen, abstracted, or destroyed, shall be punished by a fine of not more than \$10,000, or by imprisonment for not more than two years, or both. [—*Stat. L.* —.]

This is known as the "Espionage Act."

SEC. 2. [Communication of information to enemy.] (a) Whoever, with intent or reason to believe that it is to be used to the injury of the United States or to the advantage of a foreign nation, communicates, delivers, or transmits, or attempts to, or aids or induces another to, communicate, deliver, or transmit, to any foreign government, or to any faction or party or military or naval force within a foreign country, whether recognized or unrecognized by the United States, or to any representative, officer, agent, employee, subject, or citizen thereof, either directly or indirectly, any document, writing, code book, signal book, sketch, photograph, photographic negative, blue print, plan, map, model, note, instrument, appliance, or information relating to the national defense, shall be punished by imprisonment for not more than twenty years: *Provided*, That whoever shall violate the provisions of subsection (a) of this section in time of war shall be punished by death or by imprisonment for not more than thirty years; and (b) whoever, in time of war, with intent that the same shall be communicated to the enemy, shall correct, record, publish, or communicate, or attempt to elicit any information with respect to the movement, numbers, description, condition, or disposition of any of the armed forces, ships, aircraft, or war materials of the United States, or with respect to the plans or conduct, or supposed plans or conduct of any naval or military operations, or with

respect to any works or measures undertaken for or connected with, or intended for the fortification or defense of any place, or any other information relating to the public defense, which might be useful to the enemy, shall be punished by death or by imprisonment for not more than thirty years. [— *Stat. L.* —.]

SEC. 3. [Making false reports—causing insubordination, etc.—obstructing recruiting—disloyal, etc., publications.] Whoever, when the United States is at war, shall willfully make or convey false reports or false statements with intent to interfere with the operation or success of the military or naval forces of the United States, or to promote the success of its enemies, or shall willfully make or convey false reports or false statements, or say or do anything except by way of bona fide and not disloyal advice to an investor or investors, with intent to obstruct the sale by the United States of bonds or other securities of the United States or the making of loans by or to the United States, and whoever, when the United States is at war, shall willfully cause, or attempt to cause, or incite or attempt to incite, insubordination, disloyalty, mutiny, or refusal of duty, in the military or naval forces of the United States, or shall willfully obstruct or attempt to obstruct the recruiting or enlistment service of the United States, and whoever, when the United States is at war, shall willfully utter, print, write, or publish any disloyal, profane, scurrilous, or abusive language about the form of government of the United States, or the Constitution of the United States, or the military or naval forces of the United States, or the flag of the United States, or the uniform of the Army or Navy of the United States, or any language intended to bring the form of government of the United States, or the Constitution of the United States, or the military or naval forces of the United States, or the flag of the United States, or the uniform of the Army or Navy of the United States into contempt, scorn, contumely, or disrepute, or shall willfully utter, print, write, or publish any language intended to incite, provoke, or encourage resistance to the United States, or to promote the cause of its enemies, or shall willfully display the flag of any foreign enemy, or shall willfully by utterance, writing, printing, publication, or language spoken, urge, incite, or advocate any curtailment of production in this country of any thing or things, product or products, necessary or essential to the prosecution of the war in which the United States may be engaged, with intent by such curtailment to cripple or hinder the United States in the prosecution of the war, and whoever shall willfully advocate, teach, defend, or suggest the doing of any of the acts or things in this section enumerated, and whoever shall by word or act support or favor the cause of any country with which the United States is at war or by word or act oppose the cause of the United States therein, shall be punished by a fine of not more than \$10,000 or imprisonment for not more than twenty years, or both: *Provided*, That any employee or official of the United States Government who commits any disloyal act, or utters any unpatriotic or disloyal language, or who, in an abusive and violent manner criticizes the Army or Navy or the flag of the United States shall be at once dismissed from the service. Any such employee shall be dismissed by the head of the department in which the employee may be engaged, and any such

official shall be dismissed by the authority having power to appoint a successor to the dismissed official. [*— Stat. L. — as amended by — Stat. L. —.*]

As originally enacted this section was as follows:

"SEC. 3. Whoever, when the United States is at war, shall willfully make or convey false reports or false statements with intent to interfere with the operation or success of the military or naval forces of the United States or to promote the success of its enemies and whoever, when the United States is at war, shall willfully cause or attempt to cause insubordination, disloyalty, mutiny or refusal of duty, in the military or naval forces of the United States, or shall willfully obstruct the recruiting or enlistment service of the United States, to the injury of the service or of the United States, shall be punished by a fine of not more than \$10,000 or imprisonment for not more than twenty years, or both."

It was amended to read as given in the text by the Act of May 16, 1918, ch. —, § 1, entitled "An Act To amend section three, title one, of the Act entitled 'An Act to punish acts of interference with the foreign relations, the neutrality, and the foreign commerce of the United States, to punish espionage, and better to enforce the criminal laws of the United States, and for other purposes,' approved June fifteenth, nineteen hundred and seventeen, and for other purposes."

Section 2 of said amendatory Act was in part as follows:

"SEC. 2. That section one of Title XII and all other provisions of the Act entitled 'An Act to punish acts of interference with the foreign relations, the neutrality, and the foreign commerce of the United States, to punish espionage, and better to enforce the criminal laws of the United States, and for other purposes,' approved June fifteenth, nineteen hundred and seventeen, which apply to section three of Title I thereof shall apply with equal force and effect to said section three as amended."

The constitutionality of this section has been sustained in *U. S. v. Pierce*, 245 Fed. 878.

State statute.—Chapter 463 of the Minnesota Laws of 1917, making it a criminal offense to advocate that men should not enlist in the military forces or aid in prosecuting the war, does not infringe the constitutional provision conferring upon Congress the power to raise armies, nor the constitutional provision preserving freedom of speech and of the press, and is not abrogated or superseded by the Espionage Act. *State v. Holm*, (Minn.) 166 N. W. 181.

Interfering with army or navy operations.—The Espionage Act is not intended to suppress criticism or denunciation, truth or slander, oratory or gossip, argument or loose talk, but only false facts, wilfully put forward as true, and broadly, with the specific intent to interfere with army or navy operations. The more or less public impression that for any slanderous or disloyal remark the utterer can be prosecuted by the United States is a mistake. The United States can prosecute only for acts that Congress has denounced as crimes. Congress has not denounced as crimes any mere disloyal utterances, nor any slander or libel of the President or any other officer of the United States. *United States v. Hall*, 248 Fed. 150.

Whoever, when the United States is at war, wilfully makes or conveys false reports or false statements with intent to interfere with the operation or success of the military or naval forces of the United States, or to promote the success of its enemies, commits a crime against the United States. It is not necessary that

the operation or success of the military or naval forces be actually interfered with, or that the success of its enemies be actually promoted. The making or conveyance of false reports or false statements with the intent to interfere with the operation or success of either the military or naval forces of the United States or to promote the success of the enemies of the United States is all sufficient. *U. S. v. Pierce*, 245 Fed. 878.

"Military and naval forces" in the Espionage Act mean the same as in the declaration of war, the ordinary meaning, being those organized and in service, not persons merely registered and subject to future organization and service. *U. S. v. Hall*, 248 Fed. 150.

"To the injury of the service of the United States."—Section 3 of the so-called Espionage Act clearly points out three classes of acts constituting offenses thereunder. The first consists in the wilful making or conveying false reports or statements with the intent specified. The second consists in wilfully causing or attempting to cause insubordination, disloyalty, mutiny, or refusal of duty in the military or naval forces of the United States. The third consists in wilfully obstructing the recruiting or enlistment service of the United States to the injury of the service of the United States. It may be a question whether the making and conveyance of false reports and statements with intent to interfere with the operation or success of the military or naval forces of the United States, or to promote the success of its enemies, must be accompanied by an intent and purpose to injure the service of the United States,

and whether such false reports and statements must be of a nature or character which would injure the service of the United States. So it may be a question whether one who wilfully causes or attempts to cause insubordination, disloyalty, mutiny, or refusal of duty, must intend and purpose to injure the service of the United States. In short, do the words "to the injury of the service of the United States" relate back to and qualify each of the clauses of the section? Must the indictment allege, and must the government prove, not only that the United States is at war, and that the false reports and statements were made and conveyed with intent to interfere with the operation or success of the military or naval forces, but that such acts actually resulted either in injury to the service of the United States or were intended so to do? This is true as to obstructing the recruiting and enlistment service, as the section so says in plain terms. But the obstruction need not be physical and all obstruction of such service is injurious to the service of the United States. Obstruction does not necessarily imply prevention. The flowing stream of water may be obstructed, and often is, while its continuous onward flow is not wholly prevented, and its ultimate onward flow may not be prevented at all. Any and all acts and words or writings that interfere with the operation or success of the military or naval forces of the United States, and all attempts, successful or unsuccessful, by acts, words, or writings, to cause insubordination, disloyalty, mutiny, or refusal of duty in the military or naval forces of the United States in time of war, work to the injury of the service of the United States. When Congress wrote into section 3, above quoted, the words "or shall wilfully obstruct the recruiting or enlistment service of the United States, to the injury of the service or of the United States," it may have had in mind the hundreds and thousands of cases where fathers and mothers and brothers and sisters will obstruct in a way and to an extent the recruiting and enlistment service by urging and soliciting their sons and brothers not to enlist. No one will contend, I think, that such an act will be held a wilful obstruction of the enlistment service to the injury of the service of the United States within the intent and meaning of section 3 of the act under consideration. But should some third person go about soliciting and urging young men not to enlist, extravagantly and untruly depicting the horrors and

dangers and consequences of war, impugning the motives and purpose of the President and Congress in declaring war, and misrepresenting the objects sought to be attained by our government in declaring the existence of a state of war, we have a case where a jury well may find a wilful obstruction of the recruiting or enlistment service of the United States to the injury of the service of the United States, even if the government is unable to prove that a single person was induced by such acts not to enlist when otherwise he would have enlisted. *U. S. v. Pierce*, 245 Fed. 878.

Attempt.—It has been held that wilfully attempting to cause mutiny or disloyalty is punishable under this section. The attempt need not be successful to constitute an offense. *U. S. v. Trafft*, 249 Fed. 919.

But it has also been held that to sustain the charge of "wilfully obstructing the recruiting or enlistment service of the United States to the injury of the service of the United States" actual obstruction and injury must be proven, not mere attempts to obstruct. The Espionage Act does not create the crime of attempting to obstruct, but only the crime of actual obstruction, and when causing injury to the service. *U. S. v. Hall*, 248 Fed. 150.

Sufficiency of indictment.—In *U. S. v. Schaefer*, 248 Fed. 290, it was held that an indictment for making false reports and statements with intent to promote the success of the enemies of the United States was not demurrable. The court said: "The point made is that the acts charged here are not acts of the kind and character condemned by the law, in that they 'are not such as constitute the making and conveying of false reports and statements with the intent to promote the success of the enemies of the United States,' and are not such as to constitute the offense of 'obstructing recruiting and enlistment,' and the like. All of which need now be said is that the act of Congress of June 15, 1917, brands as a crime reports and statements made with the intent indicated, and as equally criminal with obstructing recruiting and the like, and this indictment charges these defendants with the commission of these acts. Whether what they did was in legal intentment and effect what they are charged with doing is a trial question, not a question of pleadings."

In *U. S. v. Pierce*, 245 Fed. 888, a motion for a bill of particulars to an indictment drawn under the section was denied.

SEC. 4. [Conspiracy to violate provisions of preceding sections.] If two or more persons conspire to violate the provisions of sections two or three of this title, and one or more of such persons does any act to effect the

object of the conspiracy, each of the parties to such conspiracy shall be punished as in said sections provided in the case of the doing of the act the accomplishment of which is the object of such conspiracy. Except as above provided conspiracies to commit offenses under this title shall be punished as provided by section thirty-seven of the Act to codify, revise, and amend the penal laws of the United States approved March fourth, nineteen hundred and nine. [— *Stat. L.* —.]

For Penal Laws, § 37, mentioned in this section, see 1909 Supp. Fed. Stat. Ann. 415; 7 Fed. Stat. Ann. (2d ed.) 534.

SEC. 5. [Harboring or concealing persons committing offenses under title.] Whoever harbors or conceals any person who he knows, or has reasonable grounds to believe or suspect, has committed, or is about to commit, an offense under this title shall be punished by a fine of not more than \$10,000 or by imprisonment for not more than two years, or both. [— *Stat. L.* —.]

SEC. 6. [Prohibited places for purposes of title — designation by President.] The President in time of war or in case of national emergency may by proclamation designate any place other than those set forth in subsection (a) of section one hereof in which anything for the use of the Army or Navy is being prepared or constructed or stored as a prohibited place for the purposes of this title: *Provided*, That he shall determine that information with respect thereto would be prejudicial to the national defense. [— *Stat. L.* —.]

SEC. 7. [Courts martial, etc.— limitation of jurisdiction.] Nothing contained in this title shall be deemed to limit the jurisdiction of the general courts-martial, military commissions, or naval courts-martial under sections thirteen hundred and forty-two, thirteen hundred and forty-three, and sixteen hundred and twenty-four of the Revised Statutes as amended. [— *Stat. L.* —.]

For R. S. secs. 1342, 1343, mentioned in this section, see 1 Fed. Stat. Ann. 490, 510; 1 Fed. Stat. Ann. (2d ed.) 443, 481.

Said R. S. sec. 1342, constituting the articles of war, is also given as amended, under WAR DEPARTMENT AND MILITARY ESTABLISHMENT, article 82 thereof superseding said R. S. sec. 1343.

For R. S. sec. 1624, constituting the articles for the Government of the Navy, mentioned in this section, see 1 Fed. Stat. Ann. 460; 1 Fed. Stat. Ann. (2d ed.) 418.

SEC. 8. [Territory affected by provisions of title.] The provisions of this title shall extend to all Territories, possessions, and places subject to the jurisdiction of the United States whether or not contiguous thereto, and offenses under this title when committed upon the high seas or elsewhere within the admiralty and maritime jurisdiction of the United States and outside the territorial limits thereof shall be punishable hereunder. [— *Stat. L.* —.]

SEC. 9. [National Defense Secrets Act — repeal.] The Act entitled "An Act to prevent the disclosure of national defense secrets," approved March third, nineteen hundred and eleven, is hereby repealed. [— *Stat. L.* —.]

For the National Defense Secrets Act of March 3, 1911, ch. 226, repealed by this section, see 1912 Supp. Fed. Stat. Ann. 274; 6 Fed. Stat. Ann. (2d ed.) 936.

TITLE II.

VESSELS IN PORTS OF THE UNITED STATES.

(See SHIPPING AND NAVIGATION.)

TITLE III.

INJURING VESSELS ENGAGED IN FOREIGN COMMERCE.

(See SHIPPING AND NAVIGATION.)

TITLE IV.

INTERFERENCE WITH FOREIGN COMMERCE BY VIOLENT MEANS.

(See IMPORTS AND EXPORTS.)

TITLE V.

ENFORCEMENT OF NEUTRALITY.

(See NEUTRALITY.)

TITLE VI.

SEIZURE OF ARMS AND OTHER ARTICLES INTENDED FOR EXPORT.

(See IMPORTS AND EXPORTS.)

TITLE VII.

CERTAIN EXPORTS IN TIME OF WAR UNLAWFUL.

(See IMPORTS AND EXPORTS.)

TITLE VIII.

DISTURBANCE OF FOREIGN RELATIONS.

SEC. 1. [Disputes between foreign government and United States — false statements injuriously affecting United States.] Whoever, in relation to any dispute or controversy between a foreign government and the United States, shall willfully and knowingly make any untrue statements, either orally or in writing, under oath before any person authorized and empowered to administer oaths, which the affiant has knowledge or reason to believe will, or may be used to influence the measures or conduct of any foreign government, or of any officer or agent of any foreign government, to the injury of the United States, or with a view or intent to influence any measure of or action by the Government of the United States, or any branch thereof, to the injury of the United States, shall be fined not more than \$5,000, or imprisoned not more than five years, or both. [— Stat. L. —.]

SEC. 2. [Falsely pretending to be official of foreign government.] Whoever within the jurisdiction of the United States shall falsely assume or pretend to be a diplomatic or consular, or other official of a foreign government duly accredited as such to the Government of the United States with intent

to defraud such foreign government or any person, and shall take upon himself to act as such, or in such pretended character shall demand or obtain, or attempt to obtain from any person or from said foreign government, or from any officer thereof, any money, paper, document, or other thing of value, shall be fined not more than \$5,000, or imprisoned not more than five years, or both. [— *Stat. L.* —.]

SEC. 3. [Agents of foreign government acting without prior notification.] Whoever, other than a diplomatic or consular officer or attache, shall act in the United States as an agent of a foreign government without prior notification to the Secretary of State shall be fined not more than \$5,000, or imprisonment not more than five years, or both. [— *Stat. L.* —.]

SEC. 4. [“ Foreign government ”— meaning of term.] The words “ foreign government,” as used in this Act and in sections one hundred and fifty-six, one hundred and fifty-seven, one hundred and sixty-one, one hundred and seventy, one hundred and seventy-one, one hundred and seventy-two, one hundred and seventy-three, and two hundred and twenty of the Act of March fourth, nineteen hundred and nine, entitled “ An Act of codify, revise, and amend the penal laws of the United States,” shall be deemed to include any Government, faction, or body of insurgents within a country with which the United States is at peace, which Government, faction, or body of insurgents may or may not have been recognized by the United States as a Government. [— *Stat. L.* —.]

For the Penal Laws of March 4, 1909, mentioned in this section, see 1909 Supp. Fed. Stat. Ann. 406; 7 Fed. Stat. Ann. (2d ed.) 387.

SEC. 5. [Conspiracy to injure property situated in foreign country.] If two or more persons within the jurisdiction of the United States conspire to injure or destroy specific property situated within a foreign country and belonging to a foreign Government or to any political subdivision thereof with which the United States is at peace, or any railroad, canal, bridge, or other public utility so situated, and if one or more of such persons commits an act within the jurisdiction of the United States to effect the object of the conspiracy, each of the parties of the conspiracy shall be fined not more than \$5,000, or imprisoned not more than three years, or both. Any indictment or information under this section shall describe the specific property which it was the object of the conspiracy to injure or destroy. [— *Stat. L.* —.]

TITLE IX.

PASSPORTS.

[See PASSPORTS.]

TITLE X.

COUNTERFEITING GOVERNMENT SEAL.

SEC. 1. [Use of seal to defraud.] Whoever shall fraudulently or wrongfully affix or impress the seal of any executive department, or of any bureau,

commission, or office of the United States, to or upon any certificate, instrument, commission, document, or paper of any description; or whoever, with knowledge of its fraudulent character, shall with wrongful or fraudulent intent use, buy, procure, sell, or transfer to another any such certificate, instrument, commission, document, or paper, to which or upon which said seal has been so fraudulently affixed or impressed, shall be fined not more than \$5,000 or imprisoned not more than five years, or both. [— *Stat. L. —*.]

SEC. 2. [Counterfeiting, mutilating, altering, etc., seal.] Whosoever shall falsely make, forge, counterfeit, mutilate, or alter, or cause or procure to be made, forged, counterfeited, mutilated, or altered, or shall willingly assist in falsely making, forging, counterfeiting, mutilating, or altering, the seal of any executive department, or any bureau, commission, or office of the United States, or whoever shall knowingly use, affix, or impress any such fraudulently made, forged, counterfeited, mutilated, or altered seal to or upon any certificate, instrument, commission, document, or paper, of any description, or whoever with wrongful or fraudulent intent shall have possession of any such falsely made, forged, counterfeited, mutilated, or altered seal, knowing the same to have been so falsely made, forged, counterfeited, mutilated, or altered, shall be fined not more than \$5,000 or imprisoned not more than ten years, or both. [— *Stat. L. —*.]

SEC. 3. [Naval, military or official pass or permit—counterfeiting, altering, forging, wrongful use, etc.] Whoever shall falsely make, forge, counterfeit, alter, or tamper with any naval, military, or official pass or permit, issued by or under the authority of the United States, or with wrongful or fraudulent intent shall use or have in his possession any such pass or permit, or shall personate or falsely represent himself to be or not to be a person to whom such pass or permit has been duly issued, or shall willfully allow any other person to have or use any such pass or permit, issued for his use alone, shall be fined not more than \$2,000 or imprisoned not more than five years, or both. [— *Stat. L. —*.]

TITLE XI.

SEARCH WARRANTS.

SEC. 1. [By whom issued.] A search warrant authorized by this title may be issued by a judge of a United States district court, or by a judge of a State or Territorial court of record, or by a United States commissioner for the district wherein the property sought is located. [— *Stat. L. —*.]

SEC. 2. [Grounds for issuance.] A search warrant may be issued under this title upon either of the following grounds:

1. When the property was stolen or embezzled in violation of a law of the United States; in which case it may be taken on the warrant from any house or other place in which it is concealed, or from the possession of the person by whom it was stolen or embezzled, or from any person in whose possession it may be.

2. When the property was used as the means of committing a felony; in which case it may be taken on the warrant from any house or other place in which it is concealed, or from the possession of the person by whom it was used in the commission of the offense, or from any person in whose possession it may be.

3. When the property, or any paper, is possessed, controlled, or used in violation of section twenty-two of this title; in which case it may be taken on the warrant from the person violating said section, or from any person in whose possession it may be, or from any house or other place in which it is concealed. [— *Stat. L.* —.]

SEC. 3. [Affidavit of complainant prerequisite — necessity of probable cause — description.] A search warrant can not be issued but upon probable cause, supported by affidavit, naming or describing the person and particularly describing the property and the place to be searched. [— *Stat. L.* —.]

SEC. 4. [Affidavits or depositions of witnesses — necessity.] The judge or commissioner must, before issuing the warrant, examine on oath the complainant and any witness he may produce, and require their affidavits to take their depositions in writing and cause them to be subscribed by the parties making them. [— *Stat. L.* —.]

SEC. 5. [Contents of affidavits or depositions.] The affidavits or depositions must set forth the facts tending to establish the grounds of the application or probable cause for believing that they exist. [— *Stat. L.* —.]

SEC. 6. [Issuance of warrant — contents.] If the judge or commissioner is thereupon satisfied of the existence of the grounds of the application or that there is probable cause to believe their existence, he must issue a search warrant signed by him with his name of office, to a civil officer of the United States duly authorized to enforce or assist in enforcing any law thereof, or to a person so duly authorized by the President of the United States, stating the particular grounds or probable cause for its issue and the names of the persons whose affidavits have been taken in support thereof, and commanding him forthwith to search the person or place named, for the property specified, and to bring it before the judge or commissioner. [— *Stat. L.* —.]

SEC. 7. [Service of warrant.] A search warrant may in all cases be served by any of the officers mentioned in its direction, but by no other person, except in aid of the officer on his requiring it, he being present and acting in its execution. [— *Stat. L.* —.]

SEC. 8. [Breaking into house to execute warrant.] The officer may break open any outer or inner door or window of a house, or any part of a house, or anything therein, to execute the warrant, if, after notice of his authority and purpose, he is refused admittance. [— *Stat. L.* —.]

SEC. 9. [Breaking door or window to liberate person within house.] He may break open any outer or inner door or window of a house for the

purpose of liberating a person who, having entered to aid him in the execution of the warrant, is detained therein, or when necessary for his own liberation. [— *Stat. L.* —.]

SEC. 10. [Time of service.] The judge or commissioner must insert a direction in the warrant that it be served in the daytime, unless the affidavits are positive that the property is on the person or in the place to be searched, in which case he may insert a direction that it be served at any time of the day or night. [— *Stat. L.* —.]

SEC. 11. [Return of service.] A search warrant must be executed and returned to the judge or commissioner who issued it within ten days after its date; after the expiration of this time the warrant, unless executed, is void. [— *Stat. L.* —.]

SEC. 12. [Copy of warrant to person from whom property is taken.] When the officer takes property under the warrant, he must give a copy of the warrant together with a receipt for the property taken (specifying it in detail) to the person from whom it was taken by him, or in whose possession it was found, or, in the absence of any person, he must leave it in the place where he found the property. [— *Stat. L.* —.]

SEC. 13. [Inventory of property taken.] The officer must forthwith return the warrant to the judge or commissioner and deliver to him a written inventory of the property taken, made publicly or in the presence of the person from whose possession it was taken, and of the applicant for the warrant, if they are present, verified by the affidavit of the officer at the foot of the inventory and taken before the judge or commissioner at the time, to the following effect: "I, R. S., the officer by whom this warrant was executed, do swear that the above inventory contains a true and detailed account of all the property taken by me on the warrant." [— *Stat. L.* —.]

SEC. 14. [Copy of inventory to person from whom property taken.] The judge or commissioner must thereupon, if required, deliver a copy of the inventory to the person from whose possession the property was taken and to the applicant for the warrant. [— *Stat. L.* —.]

SEC. 15. [Grounds on which warrant was issued controverted — testimony taken.] If the grounds on which the warrant was issued be controverted, the judge or commissioner must proceed to take testimony in relation thereto, and the testimony of each witness must be reduced to writing and subscribed by each witness. [— *Stat. L.* —.]

SEC. 16. [Disposition of property seized.] If it appears that the property or paper taken is not the same as that described in the warrant or that there is no probable cause for believing the existence of the grounds on which the warrant was issued, the judge or commissioner must cause it to be restored to the person from whom it was taken; but if it appears that the property or paper taken is the same as that described in the warrant and that there is probable cause for believing the existence of the grounds on

which the warrant was issued, then the judge or commissioner shall order the same retained in the custody of the person seizing it or to be otherwise disposed of according to law. [— *Stat. L.*—.]

SEC. 17. [Filing of papers.] The judge or commissioner must annex the affidavits, search warrant, return, inventory, and evidence, and if he has not power to inquire into the offense in respect to which the warrant was issued he must at once file the same, together with a copy of the record of his proceedings, with the clerk of the court having power to so inquire. [— *Stat. L.* —.]

SEC. 18. [Obstructing officer in execution of warrant.] Whoever shall knowingly and willfully obstruct, resist, or oppose any such officer or person in serving or attempting to serve or execute any such search warrant, or shall assault, beat, or wound any such officer or person, knowing him to be an officer or person so authorized, shall be fined not more than \$1,000 or imprisoned not more than two years. [— *Stat. L.* —.]

SEC. 19. [Perjury — subornation of perjury.] Sections one hundred and twenty-five and one hundred and twenty-six of the Criminal Code of the United States shall apply to and embrace all persons making oath or affirmation or procuring the same under the provisions of this title, and such persons shall be subject to all the pains and penalties of said sections. [— *Stat. L.* —.]

For Criminal Code, §§ 125, 126, mentioned in this section, see 1909 Supp. Fed. Stat. Ann. 437, 438; 7 Fed. Stat. Ann. (2d ed.) 670 et seq.

SEC. 20. [Maliciously procuring search warrant.] A person who maliciously and without probable cause procures a search warrant to be issued and executed shall be fined not more than \$1,000 or imprisoned not more than one year. [— *Stat. L.* —.]

SEC. 21. [Abuse of process by officer.] An officer who in executing a search warrant willfully exceeds his authority, or exercises it with unnecessary severity, shall be fined not more than \$1,000 or imprisoned not more than one year. [— *Stat. L.* —.]

SEC. 22. [Possession or control of property or papers for purpose of aiding foreign government.] Whoever, in aid of any foreign Government, shall knowingly and willfully have possession of or control over any property or papers designed or intended for use or which is used as the means of violating any penal statute, or any of the rights or obligations of the United States under any treaty or the law of nations, shall be fined not more than \$1,000 or imprisoned not more than two years, or both. [— *Stat. L.* —.]

SEC. 23. [Existing laws — how affected by title.] Nothing contained in this title shall be held to repeal or impair any existing provisions of law regulating search and the issue of search warrants. [— *Stat. L.* —.]

TITLE XII.

USE OF MAILS.

SEC. 1. [Nonmailable matter — opening letters.] Every letter, writing, circular, postal card, picture, print, engraving, photograph, newspaper, pamphlet, book, or other publication, matter or thing, of any kind, in violation of any of the provisions of this Act is hereby declared to be nonmailable matter and shall not be conveyed in the mails or delivered from any post office or by any letter carrier: *Provided*, That nothing in this Act shall be so construed as to authorize any person other than an employe of the Dead Letter Office, duly authorized thereto, or other person upon a search warrant authorized by law, to open any letter not addressed to himself. [— *Stat. L.* —.]

For general provisions relating to the mails, see *POSTAL SERVICE, post*.

Constitutionality.—Title 12 of the Espionage Act is constitutional. *Masses Pub. Co. v. Patten*, 246 Fed. 24, *reversing* on other grounds 244 Fed. 535.

It is the clear intent of title 12 to close the United States mails to any letters or literature in furtherance of any Acts prohibited under the other titles of the statutes. *Masses Pub. Co. v. Patten*, 246 Fed. 24, *reversing* on other grounds 244 Fed. 535.

Injunction against postmaster for barring publication from mail.—In *Masses Pub. Co. v. Patten*, 246 Fed. 24, an order of the court below (see 244 Fed. 535) granting a temporary injunction against the postmaster of the city of New York for treating a publication known as "The Masses" as nonmailable under the Espionage Act was reversed, the order having been authorized by the Postmaster-General. The court held that the complainant had the burden of overcoming a presumption that the Postmaster-General's conclusion was right and that this

had not been done by a preponderance of evidence. In 245 Fed. 102 this case of the *Masses Pub. Co.* was under consideration on a motion to stay the order of injunction pending the appeal. The motion was granted.

In *Jeffersonian Pub. Co. v. Wert*, 245 Fed. 585, the suit was for a preliminary injunction to restrain a postmaster from withdrawing by order of the Postmaster-General the second class mail privileges of a publication, for matter prohibited by section 3 of title 7 of this Act. It was held that the injunction should be denied on the evidence submitted.

In *U. S. v. Sugarman*, 245 Fed. 604, the indictment was held sufficient on motion for a directed verdict.

Opinions expressed by the defendant at other times and places from those referred to in the indictment are not admissible in evidence. *U. S. v. Kraft*, 249 Fed. 919.

Willful intent as jury question.—The question of willful intent is for the jury. *U. S. v. Kraft*, 249 Fed. 919.

SEC. 2. [Matter pertaining to treason, etc.] Every letter, writing, circular, postal card, picture, print, engraving, photograph, newspaper, pamphlet, book, or other publication, matter or thing, of any kind, containing any matter advocating or urging treason, insurrection, or forcible resistance to any law of the United States, is hereby declared to be nonmailable. [— *Stat. L.* —.]

SEC. 3. [Use of mails unlawfully — punishment.] Whoever shall use or attempt to use the mails or Postal Service of the United States for the transmission of any matter declared by this title to be nonmailable, shall be fined not more than \$5,000 or imprisoned not more than five years, or both. Any person violating any provision of this title may be tried and punished either in the district in which the unlawful matter or publication was mailed, or to which it was carried by mail for delivery according to the direction thereon, or in which it was caused to be delivered by mail to the person to whom it was addressed. [— *Stat. L.* —.]

SEC. 4. [Return of undeliverable mail.] When the United States is at war, the Postmaster General may, upon evidence satisfactory to him that any person or concern is using the mails in violation of any of the provisions of this Act, instruct the postmaster at any post office at which mail is received addressed to such person or concern to return to the postmaster at the office at which they were originally mailed all letters or other matter so addressed, with the words, "Mail to this address undeliverable under Espionage Act" plainly written or stamped upon the outside thereof, and all such letters or other matter so returned to such postmasters shall be by them returned to the senders thereof under such regulations as the Postmaster General may prescribe. [— *Stat. L.* —.]

This was added as a new section to this title by the Act of May 16, 1918, ch. —, § 2, section 1 of which Act amended section 3, title I, of this Act, as indicated in the notes thereto, *supra*, p. 123.

TITLE XIII.

GENERAL PROVISIONS.

SEC. 1. ["United States"—territory included in term.] The term "United States" as used in this Act includes the Canal Zone and all territory and waters, continental or insular, subject to the jurisdiction of the United States. [— *Stat. L.* —.]

SEC. 2. [Courts having jurisdiction of offenses under Act—Philippine Islands—Canal Zone.] The several courts of first instance in the Philippine Islands and the district court of the Canal Zone shall have jurisdiction of offenses under this Act committed within their respective districts, and concurrent jurisdiction with the district courts of the United States of offenses under this Act committed upon the high seas, and of conspiracies to commit such offenses, as defined by section thirty-seven of the Act entitled "An Act to codify, revise, and amend the penal laws of the United States," approved March fourth, nineteen hundred and nine, and the provisions of said section, for the purpose of this Act, are hereby extended to the Philippine Islands, and to the Canal Zone. In such cases the district attorneys of the Philippine Islands and of the Canal Zone shall have the powers and perform the duties provided in this Act for United States attorneys. [— *Stat. L.* —.]

For Penal Laws, § 37, mentioned in the text, see 1909 Fed. Stat. Ann. 415; 7 Fed. Stat. Ann. (2d ed.) 534.

SEC. 3. [Offense committed prior to taking effect of Act.] Offenses committed and penalties, forfeitures, or liabilities, incurred prior to the taking effect hereof under any law embraced in or changed, modified, or repealed by any chapter of this Act may be prosecuted and punished, and suits and proceedings for causes arising or acts done or committed prior to the taking effect hereof may be commenced and prosecuted, in the same manner and with the same effect as if this Act had not been passed. [— *Stat. L.* —.]

SEC. 4. [Effect of partial invalidity of Act.] If any clause, sentence, paragraph, or part of this Act shall for any reason be adjudged by any

court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof but shall be confined in its operation to the clause, sentence, paragraph, or part thereof directly involved in the controversy in which such judgment shall have been rendered. [— *Stat. L.* —.]

An Act To prevent interference with the use of homing pigeons by the United States, to provide a penalty for such interference, and for other purposes.

[*Act of April 19, 1918, ch. —, — Stat. L. —.*]

[SEC. 1.] [**Homing pigeons — interference with use by United States — prohibition.**] That it be, and it hereby is, declared to be unlawful to knowingly entrap, capture, shoot, kill, possess, or in any way detain an Antwerp, or homing pigeon, commonly called carrier pigeon, which is owned by the United States or bears a band owned and issued by the United States having thereon the letters "U. S. A." or "U. S. N." and a serial number. [— *Stat. L.* —.]

SEC. 2. [**Possession or detention as prima facie evidence.**] That the possession or detention of any pigeon described in section one of this Act by any person or persons in any loft, house, cage, building, or structure in the ownership or under the control of such person or persons without giving immediate notice by registered mail to the nearest military or naval authorities, shall be prima facie evidence of a violation of this Act. [— *Stat. L.* —.]

SEC. 3. [**Punishment.**] That any person violating the provisions of this Act shall, upon conviction, be punished by a fine of not more than \$100, or by imprisonment for not more than six months, or by both such fine and imprisonment. [— *Stat. L.* —.]

An Act To punish the willful injury or destruction of war material, or of war premises or utilities used in connection with war material, and for other purposes.

[*Act of April 20, 1918, ch. —, — Stat. L. —.*]

[SEC. 1.] [**Willful destruction of war material or of war premises or utilities — definitions.**] That the words "war material," as used herein, shall include arms, armament, ammunition, live-stock, stores of clothing, food, foodstuffs, or fuel; and shall also include supplies, munitions, and all other articles of whatever description, and any part or ingredient thereof, intended for, adapted to, or suitable for the use of the United States, or any associate nation, in connection with the conduct of the war.

The words "war premises," as used herein, shall include all buildings, grounds, mines, or other places wherein such war material is being produced, manufactured, repaired, stored, mined, extracted, distributed, loaded, unloaded, or transported, together with all machinery and appliances therein contained; and all forts, arsenals, navy yards, camps, prisons, or other military or naval stations of the United States, or any associate nation.

The words "war utilities," as used herein, shall include all railroads, railways, electric lines, roads of whatever description, railroad or railway fixture, canal, lock, dam, wharf, pier, dock, bridge, building, structure, engine, machine, mechanical contrivance, car, vehicle, boat, or aircraft, or any other means of transportation whatsoever, whereon or whereby such war material or any troops of the United States, or of any associate nation, are being or may be transported either within the limits of the United States or upon the high seas; and all dams, reservoirs, aqueducts, water and gas mains and pipes, structures and buildings, whereby or in connection with which water or gas is being furnished, or may be furnished, to any war premises or to the military or naval forces of the United States, or any associate nation, and all electric light and power, steam or pneumatic power, telephone and telegraph plants, poles, wires, and fixtures and wireless stations, and the buildings connected with the maintenance and operation thereof used to supply water, light, heat, power, or facilities of communication to any war premises or to the military or naval forces of the United States, or any associate nation.

The words "United States," shall include the Canal Zone and all territory and waters, continental and insular, subject to the jurisdiction of the United States.

The words "associate nation," as used in this Act, shall be deemed to mean any nation at war with any nation with which the United States is at war. [— *Stat. L.* —.]

SEC. 2. [Injuring or attempting to injure war materials, etc.—punishment.] That when the United States is at war, whoever, with intent to injure, interfere with, or obstruct the United States or any associate nation in preparing for or carrying on the war, or whoever, with reason to believe that his act may injure, interfere with, or obstruct the United States or any associate nation in preparing for or carrying on the war, shall willfully injure or destroy, or shall attempt to so injure or destroy, any war material, war premises, or war utilities, as herein defined, shall, upon conviction thereof, be fined not more than \$10,000 or imprisoned not more than thirty years, or both. [— *Stat. L.* —.]

SEC. 3. [Making or attempting to make war material in a defective manner — punishment.] That when the United States is at war, whoever, with intent to injure, interfere with, or obstruct the United States or any associate nation in preparing for or carrying on the war, or whoever, with reason to believe that his act may injure, interfere with, or obstruct the United States or any associate nation in preparing for or carrying on the war, shall willfully make or cause to be made in a defective manner, or attempt to make or cause to be made in a defective manner, any war

material, as herein defined, or any tool, implement, machine, utensil, or receptacle used or employed in making, producing, manufacturing, or repairing any such war material, as herein defined, shall, upon conviction thereof, be fined not more than \$10,000 or imprisoned not more than thirty years, or both. [— *Stat. L.* —.]

An Act To prevent in time of war departure from or entry into the United States contrary to the public safety.

[*Act of May 22, 1918, ch. —, — Stat. L. —.*]

[SEC. 1.] **[United States — entry or departure — restrictions — offenses.]** That when the United States is at war, if the President shall find that the public safety requires that restrictions and prohibitions in addition to those provided otherwise than by this Act be imposed upon the departure of persons from and their entry into the United States, and shall make public proclamation thereof, it shall, until otherwise ordered by the President or Congress, be unlawful —

(a) For any alien to depart from or enter or attempt to depart from or enter the United States except under such reasonable rules, regulations, and orders, and subject to such limitations and exceptions as the President shall prescribe;

(b) For any person to transport or attempt to transport from or into the United States another person with knowledge or reasonable cause to believe that the departure or entry of such other person is forbidden by this Act;

(c) For any person knowingly to make any false statement in an application for permission to depart from or enter the United States with intent to induce or secure the granting of such permission either for himself or for another;

(d) For any person knowingly to furnish or attempt to furnish or assist in furnishing to another a permit or evidence of permission to depart or enter not issued and designed for such other person's use;

(e) For any person knowingly to use or attempt to use any permit or evidence of permission to depart or enter not issued and designed for his use;

(f) For any person to forge, counterfeit, mutilate, or alter, or cause or procure to be forged, counterfeited, mutilated, or altered any permit or evidence of permission to depart from or enter the United States;

(g) For any person knowingly to use or attempt to use or furnish to another for use any false, forged, counterfeited, mutilated, or altered permit, or evidence of permission, or any permit or evidence of permission which, though originally valid, has become or been made void or invalid. [— *Stat. L.* —.]

SEC. 2. **[Necessity of passport.]** That after such proclamation as is provided for by the preceding section has been made and published and while said proclamation is in force, it shall, except as otherwise provided by the President, and subject to such limitations and exceptions as the

President may authorize and prescribe, be unlawful for any citizen of the United States to depart from or enter or attempt to depart from or enter the United States unless he bears a valid passport. [— *Stat. L.* —.]

SEC. 3. [Punishment.] That any person who shall willfully violate any of the provisions of this Act, or of any order or proclamation of the President promulgated, or of any permit, rule, or regulation issued thereunder, shall, upon conviction, be fined not more than \$10,000, or, if a natural person, imprisoned for not more than twenty years, or both; and the officer, director, or agent of any corporation who knowingly participates in such violation shall be punished by like fine or imprisonment, or both; and any vehicle or any vessel, together with its or her appurtenances, equipment, tackle, apparel, and furniture, concerned in any such violation, shall be forfeited to the United States. [— *Stat. L.* —.]

SEC. 4. [Definitions —“ United States ”—“ Person.”] That the term “ United States ” as used in this Act includes the Canal Zone and all territory and waters, continental or insular, subject to the jurisdiction of the United States.

The word “ person ” as used herein shall be deemed to mean any individual, partnership, association, company, or other unincorporated body of individuals, or corporation, or body politic. [— *Stat. L.* —.]

**An Act Providing for the protection of the uniform of friendly nations,
and for other purposes.**

[*Act of July 8, 1918, ch. —, — Stat. L. —.*]

[Unlawfully wearing uniform, regalia, etc., of foreign friendly State — penalty.] That it shall be unlawful for any person, with intent to deceive or mislead, within the United States or Territories, possessions, waters, or places subject to the jurisdiction of the United States, to wear any naval, military, police, or other official uniform, decoration, or regalia of any foreign State, nation, or Government with which the United States is at peace, or any uniform, decoration, or regalia so nearly resembling the same as to be calculated to deceive, unless such wearing thereof be authorized by such State, nation, or Government.

Any person who violates the provisions of this Act shall upon conviction be punished by a fine not exceeding \$300 or imprisonment for not exceeding six months, or by both such fine and imprisonment. [— *Stat. L.* —.]

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I. ARTICLES DUTIABLE AND RATES OF DUTY

An Act To amend paragraphs one hundred and seventy-seven and one hundred and seventy-eight of an Act entitled "An Act to reduce tariff duties and to provide revenue for the Government, and for other purposes," approved October third, nineteen hundred and thirteen, relating to the duty on sugar, molasses and other articles.

[Act of April 27, 1916, ch. 93, 39 Stat. L. 56.]

[SEC. 1.] **[Sugar schedule — free entry of sugar, etc., repealed.]** That the proviso of paragraph one hundred and seventy-seven of the Act entitled "An Act to reduce tariff duties and to provide revenue for the Government, and for other purposes," approved October third, nineteen hundred and thirteen (Statutes at Large, volume thirty-eight, pages one hundred and fourteen to two hundred and two, inclusive), which proviso reads as follows: "*Provided further*, That on and after the first day of May, nineteen hundred and sixteen, the articles hereinbefore enumerated in this paragraph shall be admitted free of duty," be, and the same is hereby, repealed. *[39 Stat. L. 56.]*

For the Act of Oct. 3, 1913, ch. 16, § 1, schedule E, § 177 in part repealed by this section, see 1914 Supp. Fed. Stat. Ann. 77; 2 Fed. Stat. Ann. (2d ed.) 771.

SEC. 2. [Maple sugar, etc.—free entry of repealed.] That the proviso of paragraph one hundred and seventy-eight of the aforesaid Act, which proviso reads as follows: "*Provided*, That on and after the first day of May, nineteen hundred and sixteen, the articles hereinbefore enumerated

in this paragraph shall be admitted free of duty," be, and the same is hereby, repealed. [39 Stat. L. 57.]

For the Act of Oct. 3, 1913, ch. 16, § 1, schedule E, § 178 in part repealed by this section, see 1914 Supp. Fed. Stat. Ann. 77; 2 Fed. Stat. Ann. (2d ed.) 172.

An Act To provide for the storing and cleansing of imported Mexican peas, commonly called "garbanzo."

[Act of June 28, 1916, ch. 180, 39 Stat. L. 239.]

[Imported Mexican peas — storing and cleansing — duty.] That under such regulations and conditions as may be prescribed by the Secretary of the Treasury, bonded warehouses may be established in which imported Mexican peas, commonly called garbanzo may be stored, cleaned, repacked, or otherwise changed in condition, but not manufactured, and withdrawn for exportation without the payment of duty thereon: *Provided*, That the whole or any part of such imported garbanzo, and the waste material and by-products incident to cleaning or otherwise treating said imported garbanzo, may be withdrawn for domestic consumption upon the payment on the quantity so withdrawn of the duty imposed by law on such garbanzo in their condition as imported: *And provided further*, That the compensation of customs officers and storekeepers for all services in the supervision of such warehouses shall be paid from moneys advanced by the warehouse proprietor to the collector of customs and be carried in a special account and disbursed for such purposes, and all expenses incurred shall be paid by the warehouse proprietor. [39 Stat. L. 239.]

TITLE V.—DYESTUFFS

SEC. 500. [Dyestuffs — rates of duties.] That on and after the day following the passage of this Act, except as otherwise specially provided for in this title, there shall be levied, collected, and paid upon the articles named in this section when imported from any foreign country into the United States or into any of its possessions, except the Philippine Islands and the islands of Guam and Tutuila, the rates of duties which are prescribed in this title, namely:

FREE LIST

Group I. Acenaphthene, anthracene having a purity of less than twenty-five per centum, benzol, carbazol having a purity of less than twenty-five per centum, cresol, cumol, fluorene, metacresol having a purity of less than ninety per centum, methylantracene, methylnaphthalene, naphthalene having a solidifying point less than seventy-nine degrees centigrade, ortho-cresol having a purity of less than ninety per centum, paracresol having a purity of less than ninety per centum, pyridin, quinolin, toluol, xylol, crude coal tar, pitch of coal tar, dead or creosote oil, anthracene oil, all other distillates which on being subjected to distillation yield in the portion

distilling below two hundred degrees centigrade a quantity of tar acids less than five per centum of the original distillate, and all other products that are found naturally in coal tar, whether produced or obtained from coal tar or other source, and not otherwise specially provided for in this title, shall be exempt from duty.

DUTIABLE LIST

Group II. Amidonaphthol, amidophenol, amidosalicylic acid, anilin oil, anilin salts, anthracene having a purity of twenty-five per centum or more, anthraquinone, benzoic acid, benzaldehyde, benzylchloride, benzidin, binitrobenzol, binitrochlorobenzol, binitronaphthalene, binitrotoluol, carbazol having a purity of twenty-five per centum or more, chlorophthalic acid, cumidin, dimethylanilin, dianisidin, dioxynaphthalene, diphenylamin, metacresol having a purity of ninety per centum or more, methylanthraquinone, metanilic acid, naphthalene having a solidifying point of seventy-nine degrees centigrade or above, naphthylamin, naphthol, naphthylenediamin, nitrobenzol, nitrotoluol, nitronaphthalene, nitranilin, nitrophenylenediamin, nitrotoluylenediamin, orthocresol having a purity of ninety per centum or more, paracresol having a purity of ninety per centum or more, phenol, phthalic acid, phthalic anhydride, phenylenediamin, phenylnaphthylamin, resorcin, salicylic acid, sulphanilic acid, toluidin, tolidin, toluylenediamin, xylidin, or any sulphoacid or sulphoacid salt of any of the foregoing, all similar products obtained, derived, or manufactured in whole or in part from the products provided for in Group I, and all distillates which on being subjected to distillation yield in the portion distilling below two hundred degrees centigrade a quantity of tar acids equal to or more than five per centum of the original distillate, all the foregoing not colors, dyes, or stains, photographic chemicals, medicinals, flavors, or explosives, and not otherwise provided for in this title, and provided for in the paragraphs of the Act of October third, nineteen hundred and thirteen, which are hereinafter specifically repealed by section five hundred and two, fifteen per centum ad valorem.

Group III. All colors, dyes, or stains, whether soluble or not in water, color acids, color bases, color lakes, photographic chemicals, medicinals, flavors, synthetic phenolic resin, or explosives, not otherwise specially provided for in this title, when obtained, derived, or manufactured in whole or in part from any of the products provided for in Groups I and II, natural alizarin and indigo, and colors, dyes, or color lakes obtained, derived, or manufactured therefrom, thirty per centum ad valorem. [39 Stat. L. 793.]

The foregoing section 500, and the following sections 501, 502, constitute "Title V.—Dyestuffs" of the Act of Sept. 8, 1916, ch. 463, entitled "An Act to increase the revenue and for other purposes." Title IX of this Act, secs. 900–902, given in INTERNAL REVENUE, *post*, p. 381, contains general provisions affecting the entire Act and should be considered in connection with these sections.

For a reference to the Act mentioned in the second paragraph of this section, see the notes to section 502, *infra*, p. 142.

SEC. 501. [Special duties.] That on and after the day following the passage of this Act, in addition to the duties provided in section five hundred, there shall be levied, collected, and paid upon all articles contained in

Group II a special duty of $2\frac{1}{2}$ cents per pound, and upon all articles contained in Group III (except natural and synthetic alizarin, and dyes obtained from alizarin, anthracene, and carbazol; natural and synthetic indigo and all indigoids, whether or not obtained from indigo; and medicinals and flavors), a special duty of 5 cents per pound.

During the period of five years beginning five years after the passage of this Act such special duties shall be annually reduced by twenty per centum of the rate imposed by this section, so that at the end of such period such special duties shall no longer be assessed, levied, or collected; but if, at the expiration of five years from the date of the passage of this Act, the President finds that there is not being manufactured or produced within the United States as much as sixty per centum in value of the domestic consumption of the articles mentioned in Groups II and III of section five hundred, he shall by proclamation so declare, whereupon the special duties imposed by this section on such articles shall no longer be assessed, levied, or collected. [39 Stat. L. 794.]

See the note to the preceding section 500 of this Act.

SEC. 502. [Repeal of certain laws.] That paragraphs twenty, twenty-one, twenty-two, and twenty-three and the words "salicylic acid" in paragraph one of Schedule A of section one of an Act entitled "An Act to reduce tariff duties and to provide revenue for the Government, and for other purposes," approved October third, nineteen hundred and thirteen, and paragraphs three hundred and ninety-four, four hundred and fifty-two, and five hundred and fourteen, and the words "carbolic" and "phthalic," in paragraph three hundred and eighty-seven of the "free list" of section one of said Act, and so much of said Act or any existing law or parts of law as may be inconsistent with this title are hereby repealed. [39 Stat. L. 794.]

See the note to section 500 of this Act, *supra*, p. 140.

For the provisions of the Tariff Act of Oct. 3, 1913, ch. 16, in part repealed by this section, see 1914 Supp. Fed. Stat. Ann. 59; 2 Fed. Stat. Ann. (2d ed.) 724.

TITLE VI.—PRINTING PAPER

SEC. 600. [Printing paper—rates of duty—former act amended.] That paragraph three hundred and twenty-two, Schedule M, and paragraph five hundred and sixty-seven of the free list of the Act entitled "An Act to reduce tariff duties and to provide revenue for the Government, and for other purposes," approved October third, nineteen hundred and thirteen, be amended so that the same shall read as follows:

"322. Printing paper (other than paper commercially known as hand-made or machine handmade paper, japan paper, and imitation japan paper by whatever name known), unsized, sized, or glued, suitable for the printing of books and newspapers, but not for covers or bindings, not specially provided for in this section, valued above 5 cents per pound, twelve per centum ad valorem: *Provided, however,* That if any country, dependency, province, or other subdivision of government shall impose any export duty, export license fee, or other charge of any kind whatsoever (whether in the form of additional charge or license fee or otherwise) upon printing

paper, wood pulp, or wood for use in the manufacture of wood pulp, there shall be imposed upon printing paper, values above 5 cents per pound, when imported either directly or indirectly from such country, dependency, province, or other subdivision of government, an additional duty equal to the amount of the highest export duty or other export charge imposed by such country, dependency, province, or other subdivision of government, upon either printing paper or upon an amount of wood pulp, or wood for use in the manufacture of wood pulp necessary to manufacture such printing paper.

"567. Printing paper (other than paper commercially known as handmade or machine handmade paper, japan paper and imitation japan paper by whatever name known), unsized, sized, or glued, suitable for the printing of books and newspapers, but not for the covers or bindings, not specially provided for in this section, valued at not above 5 cents per pound, decalcomania paper not printed." [39 Stat. L. 795.]

The foregoing section 600 constitutes "Title VI.—Printing Paper" of the Act of Sept. 8, 1916, ch. 463, entitled "An Act to increase the revenue, and for other purposes." Title IX of this Act, secs. 900-902, given in *INTERNAL REVENUE*, *post*, p. 381, contains general provisions affecting the entire Act and should be considered in connection with this section.

For the Act of Oct. 3, 1913, ch. 16, paragraphs 322 and 567, amended by this section, see 1914 Supp. Fed. Stat. Ann. 90, 107; 2 Fed. Stat. Ann. (2d ed.) 810, 869.

II. QUALIFICATIONS, PAY, AND DUTIES OF OFFICERS

[SEC. 1.] [Customs service — pay of laborers.] * * * Section one of the Act entitled "An Act fixing the compensation of certain officials in the customs service, and for other purposes," approved March fourth, nineteen hundred and nine, shall not prohibit the Secretary of the Treasury from fixing the pay of laborers in the customs service at a rate not exceeding \$2.50 per day if in so doing the aggregate amount paid to any person in any month does not exceed \$70. [39 Stat. L. 803.]

This is from the Deficiencies Appropriation Act of Sept. 8, 1916, ch. 464.

For the Act of March 4, 1909, ch. 314, § 1, mentioned in this section, see 2 Fed. Stat. Ann. 112. Said section 1 provided: "That the Secretary of the Treasury be, and he is hereby, authorized to increase and fix the compensation of laborers in the customs service, as he may think advisable, to a rate not exceeding eight hundred and forty dollars per annum." This section would seem to be superseded by the plan for the reorganization of the customs service given in 2 Fed. Stat. Ann. (2d ed.) 902.

III. BOND AND WAREHOUSE SYSTEM

Joint Resolution Proposing to amend section twenty-nine hundred and seventy-one of the Revised Statutes of the United States.

[Res. of Sept. 5, 1916, ch. 441, 39 Stat. L. 725.]

[Merchandise in bonded warehouse — payment of duty for exportation.] That the limitation of section twenty-nine hundred and seventy-one of the Revised Statutes of the United States as to the period during which merchandise may remain in bonded warehouse without the payment of duty

for exportation to Mexico be, and the same hereby is, extended to all merchandise which was in bonded warehouse on August first, nineteen hundred and sixteen, and intended for exportation to Mexico, until such time as in the opinion of the Secretary of the Treasury conditions in Mexico are such as to make it commercially practicable to export the merchandise to that country. [39 Stat. L. 725.]

For R. S. sec. 2971, mentioned in this Act, see 2 Fed. Stat. Ann. 699; 2 Fed. Stat. Ann. (2d ed.) 1100.

IV. IMMEDIATE TRANSPORTATION INLAND

An Act To amend an Act entitled "An Act to amend the statutes in relation to immediate transportation of dutiable goods, and for other purposes," approved June tenth, eighteen hundred and eighty.

[Act of June 16, 1916, ch. 154, 39 Stat. L. 229.]

[Port of Jacksonville — immediate transportation privileges.] That the privileges of the first section of the Act approved June tenth, eighteen hundred and eighty, entitled "An Act to amend the statutes in relation to immediate transportation of dutiable goods, and for other purposes," be, and the same are hereby, extended to the port of Jacksonville, Florida. [39 Stat. L. 229.]

For the Act of June 10, 1880, ch. 190, § 1, mentioned in this Act, see 2 Fed. Stat. Ann. 712; 2 Fed. Stat. Ann. (2d ed.) 1119.

An Act For the establishment of Winston-Salem, in the State of North Carolina, as a port of delivery under the Act of June tenth, eighteen hundred and eighty, governing the immediate transportation without appraisement of dutiable merchandise.

[Act of June 16, 1916, ch. 157, 39 Stat. L. 232.]

[Port of Winston-Salem — immediate transportation privileges.] That the privileges of the seventh section of the Act approved June tenth, eighteen hundred and eighty, governing the immediate transportation of dutiable merchandise without appraisement, be, and are hereby, extended to the port of Winston-Salem, in the State of North Carolina. [39 Stat. L. 232.]

For the Act of June 10, 1880, ch. 190, § 7, mentioned in this Act, see 2 Fed. Stat. Ann. 715; 2 Fed. Stat. Ann. (2d ed.) 1124.

An Act For the establishment of Northport, Chopaka, and Laurier, in the State of Washington, as ports of entry for immediate transportation without appraisement of dutiable merchandise.

[Act of July 8, 1916, ch. 234, 39 Stat. L. 354.]

[Ports in Washington — immediate transportation privileges.] That the privileges of the first section of the Act approved June tenth, eighteen

hundred and eighty, governing the immediate transportation of dutiable merchandise without appraisement, be, and are hereby, extended to the ports of Northport, Chopaka, and Laurier, in the State of Washington. [39 Stat. L. 354.]

For the Act of July 10, 1880, ch. 190, § 1, mentioned in this Act, see 2 Fed. Stat. Ann. 712; 2 Fed. Stat. Ann. (2d ed.) 1119.

An Act For the establishment of Noyes, in the State of Minnesota, as a port of entry and delivery for immediate transportation without appraisement of dutiable merchandise.

[Act of Aug. 7, 1916, ch. 270, 39 Stat. L. 435.]

[Port of Noyes, Minnesota — immediate transportation privileges.] That the privileges of the first and seventh sections of the Act approved June tenth, eighteen hundred and eighty, governing the immediate transportation of dutiable merchandise without appraisement be, and are hereby, extended to the port of Noyes, in the State of Minnesota. [39 Stat. L. 435.]

For the Act of June 10, 1880, ch. 190, §§ 1 and 7, mentioned in this Act, see 2 Fed. Stat. Ann. 712, 715; 2 Fed. Stat. Ann. (2d ed.) 1119, 1124.

An Act For the establishment of Northgate, in the State of North Dakota, as a port of entry for immediate transportation without appraisement of dutiable merchandise.

[Act of Oct. 6, 1917, ch. —, — Stat. L. —.]

[Port of Northgate, N. D. — immediate transportation privileges.] That the privileges of the first section of the Act approved June tenth, eighteen hundred and eighty, governing the immediate transportation of dutiable merchandise without appraisement, be, and are hereby, extended to the port of Northgate, in the State of North Dakota. [— Stat. L. —.]

For the Act of June 10, 1880, ch. 190, § 1, mentioned in this Act, see 2 Fed. Stat. Ann. 712; 2 Fed. Stat. Ann. (2d ed.) 1119.

V. TARIFF COMMISSION

TITLE VII.—TARIFF COMMISSION

SEC. 700. [Tariff Commission — creation — membership — qualifications.] That a commission is hereby created and established, to be known as the United States Tariff Commission (hereinafter in this title referred to as the commission), which shall be composed of six members, who shall be appointed by the President, by and with the advice and consent of the Senate, not more than three of whom shall be members of the same political party. In making said appointments members of different political parties shall alternate as nearly as may be practicable. The first members appointed

shall continue in office for terms of two, four, six, eight, ten, and twelve years, respectively, from the date of the passage of this Act, the term of each to be designated by the President, but their successors shall be appointed for terms of twelve years, except that any person chosen to fill a vacancy shall be appointed only for the unexpired term of the member whom he shall succeed. The President shall designate annually the chairman and vice chairman of the commission. No member shall engage actively in any other business, function, or employment. Any member may be removed by the President for inefficiency, neglect of duty, or malfeasance in office. A vacancy shall not impair the right of the remaining members to exercise all the powers of the commission, but no vacancy shall extend beyond any session of Congress. [39 Stat. L. 795.]

The foregoing section 700 and the following sections 701–709 constitute “Title VII.—Tariff Commission” of the Act of Sept. 8, 1916, ch. 463, entitled “An Act to increase the revenue, and for other purposes.” Title IX of this Act, secs. 900–902, given in INTERNAL REVENUE, *post*, p. 381, contains general provisions affecting the entire Act and should be considered in connection with these sections.

SEC. 701. [Salaries — employees — expenses — offices.] That each commissioner shall receive a salary of \$7,500 per year, payable monthly. The commission shall appoint a secretary, who shall receive a salary of \$5,000 per year, payable in like manner, and it shall have authority to employ and fix the compensations of such special experts, examiners, clerks, and other employees as the commission may from time to time find necessary for the proper performance of its duties.

With the exception of the secretary, a clerk to each commissioner, and such special experts as the commission may from time to time find necessary for the conduct of its work, all employees of the commission shall be appointed from lists of eligibles to be supplied by the Civil Service Commission and in accordance with the civil-service law.

All of the expenses of the commission, including all necessary expenses for transportation incurred by the commissioners or by their employees under their orders in making any investigation or upon official business in any other places than at their respective headquarters, shall be allowed and paid on the presentation of itemized vouchers therefor approved by the commission.

Unless otherwise provided by law, the commission may rent suitable offices for its use, and purchase such furniture, equipment, and supplies as may be necessary.

The principal office of the commission shall be in the city of Washington, but it may meet and exercise all its powers at any other place. The commission may, by one or more of its members, or by such agents as it may designate, prosecute any inquiry necessary to its duties in any part of the United States or in any foreign country. [39 Stat. L. 795.]

See the note to the preceding section 700 of this Act.

SEC. 702. [Duties of commission.] That it shall be the duty of said commission to investigate the administration and fiscal and industrial effects of the customs laws of this country now in force or which may be hereafter enacted, the relations between the rates of duty on raw materials and finished or partly finished products, the effects of ad valorem and specific duties and

of compound specific and ad valorem duties, all questions relative to the arrangement of schedules and classification of articles in the several schedules of the customs law, and, in general, to investigate the operation of customs laws, including their relation to the Federal revenues, their effect upon the industries and labor of the country, and to submit reports of its investigations as hereafter provided. [39 Stat. L. 796.]

See the notes to section 700 of this Act, *supra*, p. 145.

SEC. 703. [Information furnished President, etc.— Reports.] That the commission shall put at the disposal of the President of the United States, the Committee on Ways and Means of the House of Representatives, and the Committee on Finance of the Senate, whenever requested, all information at its command, and shall make such investigations and reports as may be requested by the President or by either of said committees or by either branch of the Congress, and shall report to Congress on the first Monday of December of each year hereafter a statement of the methods adopted and all expenses incurred, and a summary of all reports made during the year. [39 Stat. L. 796.]

See the notes to section 700 of this Act, *supra*, p. 145.

SEC. 704. [Investigation of tariff relations with foreign countries.] That the commission shall have power to investigate the tariff relations between the United States and foreign countries, commercial treaties, preferential provisions, economic alliances, the effect of export bounties and preferential transportation rates, the volume of importations compared with domestic production and consumption, and conditions, causes, and effects relating to competition of foreign industries with those of the United States, including dumping and cost of production. [39 Stat. L. 796.]

See the notes to section 700 of this Act, *supra*, p. 145.

SEC. 705. [Transfer of bureaus, etc., to commission.] That upon the organization of the commission, the Cost of Production Division in the Bureau of Foreign and Domestic Commerce in the Department of Commerce shall be transferred to said commission, and the clerks and employees of said division shall be transferred to and become clerks and employees of the commission, and all records, papers, and property of the said division and of the former tariff board shall be transferred to and become the records, papers, and property of the commission. [39 Stat. L. 796.]

See the notes to section 700 of this Act, *supra*, p. 145.

SEC. 706. [Access to papers — subpoenas — testimony — mandamus — depositions — witnesses — fees, etc.— immunity.] That for the purposes of carrying this title into effect the commission or its duly authorized agent or agents shall have access to and the right to copy any document, paper, or record, pertinent to the subject matter under investigation, in the possession of any person, firm, copartnership, corporation, or association engaged in the production, importation, or distribution of any article under investigation, and shall have power to summon witnesses, take testimony, administer oaths, and to require any person, firm, copartnership, corporation, or association

to produce books or papers relating to any matter pertaining to such investigation. Any member of the commission may sign subpoenas, and members and agents of the commission, when authorized by the commission, may administer oaths and affirmations, examine witnesses, take testimony, and receive evidence.

Such attendance of witnesses and the production of such documentary evidence may be required from any place in the United States at any designated place of hearing. And in case of disobedience to a subpoena the commission may invoke the aid of any district court of the United States in requiring the attendance and testimony of witnesses and the production of documentary evidence, and such court within the jurisdiction of which such inquiry is carried on may, in case of contumacy or refusal to obey a subpoena issued to any corporation or other person, issue an order requiring such corporation or other person to appear before the commission, or to produce documentary evidence if so ordered, or to give evidence touching the matter in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof.

Upon the application of the Attorney General of the United States, at the request of the commission, any such court shall have jurisdiction to issue writs of mandamus commanding compliance with the provisions of this title or any order of the commission made in pursuance thereof.

The commission may order testimony to be taken by deposition in any proceeding or investigation pending under this title at any stage of such proceeding or investigation. Such depositions may be taken before any person designated by the commission and having power to administer oaths. Such testimony shall be reduced to writing by the person taking the deposition, or under his direction, and shall then be subscribed by the deponent. Any person, firm, copartnership, corporation, or association, may be compelled to appear and depose and to produce documentary evidence in the same manner as witnesses may be compelled to appear and testify and produce documentary evidence before the commission, as herein before provided.

Witnesses summoned before the commission shall be paid the same fees and mileage that are paid witnesses in the courts of the United States, and witnesses whose depositions are taken and the persons taking the same, except employees of the commission, shall severally be entitled to the same fees and mileage as are paid for like services in the courts of the United States: *Provided*, That no person shall be excused, on the ground that it may tend to incriminate him or subject him to a penalty or forfeiture, from attending and testifying, or producing books, papers, documents, and other evidence, in obedience to the subpoena of the commission; but no natural person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing as to which, in obedience to a subpoena and under oath, he may so testify or produce evidence, except that no person shall be exempt from prosecution and punishment for perjury committed in so testifying. [39 Stat. L. 797.]

See the notes to section 700 of this Act, *supra*, p. 145.

SEC. 707. [Cooperation with other departments.] That the said commission shall in appropriate matters act in conjunction and cooperation with the Treasury Department, the Department of Commerce, the Federal Trade Commission, or any other departments, or independent establishments

of the Government, and such departments and independent establishments of the Government shall cooperate fully with the commission for the purposes of aiding and assisting in its work, and, when directed by the President, shall furnish to the commission, on its request, all records, papers, and information in their possession relating to any of the subjects of investigation by said commission and shall detail, from time to time, such officials and employees to said commission as he may direct. [39 Stat. L. 797.]

See the notes to section 700 of this Act, *supra*, p. 145.

SEC. 708. [Confidential nature of information received — investigation of Paris Economy Pact.] It shall be unlawful for any member of the United States Tariff Commission, or for any employee, agent, or clerk of said commission, or any other officer or employee of the United States, to divulge, or to make known in any manner whatever not provided for by law, to any person, the trade secrets or processes of any person, firm, copartnership, corporation, or association embraced in any examination or investigation conducted by said commission, or by order of said commission, or by order of any member thereof. Any offense against the provisions of this section shall be a misdemeanor and be punished by a fine not exceeding \$1,000, or by imprisonment not exceeding one year, or both, in the discretion of the court, and such offender shall also be dismissed from office or discharged from employment. The commission shall have power to investigate the Paris Economy Pact and similar organizations and arrangements in Europe. [39 Stat. L. 798.]

See the notes to section 700 of this Act, *supra*, p. 145.

SEC. 709. [Appropriation to defray expenses.] That there is hereby appropriated, for the purpose of defraying the expense of the establishment and maintenance of the commission, including the payment of salaries herein authorized, out of any money in the Treasury of the United States not otherwise appropriated, the sum of \$300,000 for the fiscal year ending June thirtieth, nineteen hundred and seventeen, and for each fiscal year thereafter a like sum is authorized to be appropriated. [39 Stat. L. 798.]

See the notes to section 700 of this Act, *supra*, p. 145.

DANISH WEST INDIES

See WEST INDIAN ISLANDS

DESERT LANDS

See PUBLIC LANDS

DIPLOMATIC AND CONSULAR OFFICERS

Act of July 1, 1916, ch. 208, 150.

Secretaries of Class One — Designation as Counselor, 150.

Definitions — “Diplomatic Officer” — “Counselors” — R. S. sec. 1674 Amended, 150.

Act of March 3, 1917, ch. 161, 150.

Consuls General, Consuls and Consular Agents — Qualifications — American Citizens, 150.

Consular Inspectors — Allowance for Subsistence, 151.

Act of April 15, 1918, ch. —, 151.

Salaries of Consular Assistants, 151.

CROSS-REFERENCE

Commercial Attachés, see COMMERCE DEPARTMENT.

[Secretaries of class one — designation as counselor.] * * * That the President may, whenever he considers it advisable so to do, designate and assign any secretary of class one as counselor of embassy or legation. [39 Stat. L. 252.]

This and the following paragraph of the text are from the Diplomatic and Consular Appropriation Act of July 1, 1916, ch. 208.

The Act of March 4, 1915, ch. 153, § 17, 38 Stat. L. 1184, provided that so much of R. S. sec. 4081 (see 2 Fed. Stat. Ann. 818; 3 Fed. Stat. Ann. 2d ed. 59) as related to the arrest or imprisonment of officers and seamen deserting or charged with desertion from merchant vessels of foreign nations in the United States and Territories and possessions thereof, and for the co-operation, aid, and protection of competent legal authorities in effecting such arrest or imprisonment, should, on certain conditions, be repealed.

[Definitions — “diplomatic officer” — “counselors” — R. S. sec. 1674 amended.] * * * That section sixteen hundred and seventy-four of the Revised Statutes, fifth paragraph, as amended by section six of the Act approved February fifth, nineteen hundred and fifteen, entitled “An Act for the improvement of the foreign service” is hereby amended to include after the words “chargé d'affaires” the word “counselors.” [39 Stat. L. 252.]

See the note to the preceding paragraph of the text.

For R. S. sec. 1674 mentioned in this paragraph, as originally enacted, see 2 Fed. Stat. Ann. 780. For R. S. sec. 1674 mentioned in this paragraph, as amended by the Act of Feb. 5, 1915, ch. 23, § 6, see 1914 Supp. Fed. Stat. Ann. 40; 3 Fed. Stat. Ann. (2d ed.) 9.

[Consuls general, consuls and consular agents — qualifications — American citizens.] * * * That if in any case the Secretary of State deems it impracticable immediately to secure a competent vice consul who is an American citizen, he may appoint or retain as vice consul and compensate from this fund a person not an American citizen until such time as he is able to designate a competent American citizen for such post. Every

consul general, consul, and, wherever practicable, every consular agent shall be an American citizen. [39 Stat. L. 1057.]

This and the following paragraph of the text are from the Diplomatic and Consular Appropriation Act of March 3, 1917, ch. 181.

Provisions identical with those of these two paragraphs were made by the Act of July 1, 1916, ch. 208, 39 Stat. L. 261.

[Consular inspectors—allowance for subsistence.] * * * That inspectors shall be allowed actual and necessary expenses for subsistence, itemized, not exceeding an average of \$5 per day. [39 Stat. L. 1057.]

See the note to the preceding paragraph of the text.

Salaries of consular assistants. * * * That from and after the first day of July, nineteen hundred and eighteen, the salaries of consular assistants shall be at the rate of \$1,500 for the first year of continuous service, \$1,650 for the second year of continuous service, \$1,800 for the third year, and \$2,000 for the fourth year of continuous service and for each year thereafter, and section seventeen hundred and four, Revised Statutes, its amendatory Act of June eleven, eighteen hundred and seventy-four, and all other Acts inconsistent with this provision are hereby so amended. [— Stat. L. —.]

This is from the Diplomatic and Consular Service Appropriation Act of April 15, 1918, ch. —.

For R. S. sec. 1704 as amended, see 2 Fed. Stat. Ann. 796; 3 Fed. Stat. Ann. (2d ed.) 29.

DISTRICT OF COLUMBIA

Res. of May 31, 1918, No. —, 151.

Control and Regulation of Rentals of Real Estate, 151.

Act of July 8, 1918, ch. —, 152.

Requisition of Buildings for Military Purposes, 152.

Act of July 9, 1918, ch. —, 153.

Rent or Lease of Buildings for Military Purposes, 153.

Aircraft Employees in the District of Columbia, 153.

Joint Resolution To prevent rent profiteering in the District of Columbia.

[*Res. of May 31, 1918, No. —, — Stat. L. —.*]

[Control and regulation of rentals of real estate.] That until a treaty of peace shall have been definitely concluded between the United States and the Imperial German Government, unless in the meantime otherwise provided by Congress, no judicial order, decree, or judgment for the recovery of possession of any real estate in the District of Columbia, now or hereafter held or acquired by oral or written agreement of lease for one month or any longer period, or for the ejectment or dispossession of a tenant therefrom, shall be made, and all leases thereof shall continue so

long as the tenant continues to pay rent at the agreed rate and performs the other conditions of the tenancy which are not inconsistent herewith, unless the tenant has committed waste, or has been guilty on the premises of conduct which constitutes a nuisance or a breach of the peace, or other misdemeanor or crime, or that the premises are necessarily required by a landlord or bona fide purchaser for occupation either by himself or his wife, children, or dependents while he is in the employ of or officially connected with any branch of the Government, or where the property has been sold to a bona fide purchaser for his own occupancy; and where such order, decree, or judgment has been made, but not executed before the passage of this resolution, the court by which the order, decree, or judgment was made shall, if it is of the opinion that the order, decree, or judgment would not have been made if this resolution had been in force at the date of the making of the order, decree, or judgment, rescind or modify the order, decree, or judgment in such manner as the court may deem proper for the purpose of giving effect to this resolution; and all remedies, at law or in equity, of the lessor based on any provision in any oral or written agreement of lease that the same shall be determined or forfeited if the premises shall be sold are hereby suspended while this resolution shall be in force, and every purchaser shall take the conveyance of any premises subject to the rights of all tenants in possession thereof under the provisions of this resolution.

That the term "real estate" as herein used shall be construed to include any and all land, any building, any part of any building, house, or dwelling, any apartment, room, suite of rooms and every other improvement or structure whatsoever on land situated and being in the District of Columbia. [— *Stat. L.* —.]

Preceding the text of this resolution as here given was the following preamble: "Whereas by reason of the existence of a state of war, it is essential to the national security and defense, and for the successful prosecution of the war, to establish governmental control and assure adequate regulation of real estate in the District of Columbia for and during the period hereinafter set forth: Therefore be it," etc.

[Requisition of buildings for military purposes.] * * * The Secretary of War is authorized, for the official purposes of the War Department, and within the limits of the appropriations for rent made by this or any other Act making appropriations for the War Department, to requisition the use of, and take possession of, any building or any space in any building, and the appurtenances thereof, in the District of Columbia, other than a dwelling house occupied as such or a building occupied by any other branch of the United States Government, and he shall ascertain and pay just compensation for such use. If the amount of compensation so ascertained be not satisfactory to the person entitled to receive the same, such person shall be paid seventy-five per centum of such amount and shall be entitled to sue the United States to recover such further sum as, added to said seventy-five per centum, will make up such amount as will be just compensation for such use in the manner provided by section

twenty-four, paragraph twenty, and section one hundred and forty-five, of the Judicial Code. [— *Stat. L.* —.]

This is from the Deficiencies Appropriation Act of July 8, 1918, ch. —.

For Judicial Code, § 24, par. 20, and section 145, see 1912 Supp. Fed. Stat. Ann., pp. 140, 200; 4 Fed. Stat. Ann. (2d ed.) 1059; 5 Fed. Stat. Ann. (2d ed.) 649.

[**Rent or lease of buildings for military purposes.**] That in time of war, or when war is imminent, the Secretary of War is hereby authorized, in his discretion, to rent or lease any building or part of building in the istriet of Columbia that may be required for military purposes. [— *Stat. L.* —.]

This and the following paragraph of the text are from the Army Appropriation Act of July 9, 1918, ch. —.

[**Aircraft employees in the District of Columbia.**] That during the existing emergency the head of the bureau or department charged with aircraft production be, and he is hereby, authorized to employ in the District of Columbia out of appropriations made for designing, procuring, caring for, and supplying airships, engines, and property connected therewith such services as are necessary for carrying out these purposes. [— *Stat. L.* —.]

DRAFT ACT

See WAR DEPARTMENT AND MILITARY ESTABLISHMENT

DRAINAGE

See PUBLIC LANDS.

EDUCATION

Act of Feb. 23, 1917, ch. 114, 154.

- Sec. 1. Vocational Education — Promotion — Cooperation with State — Appropriation, 154.*
- 2. Agricultural Subjects — Salaries of Teachers, etc. — Amount of Appropriation — Allotment, 155.*
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11. Trade, Home Economics and Industrial Subjects — Character of Instruction, 160.

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18. Annual Report by Federal Board, 163.

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Sec. 1. Vocational Education Act — Appropriation — For What Available — Failure of State to Accept Provisions of Act, 163.

Act of March 28, 1918, ch. —, 163.

Sec 1. Soldiers and Sailors — Special Instruction in District of Columbia Schools, 163.

CROSS-REFERENCE

See *VOCATIONAL REHABILITATION.*

An Act To provide for the promotion of vocational education; to provide for cooperation with the States in the promotion of such education in agriculture and the trades and industries; to provide for cooperation with the States in the preparation of teachers of vocational subjects; and to appropriate money and regulate its expenditure.

[*Act of Feb. 23, 1917, ch. 114, 39 Stat. L. 929.*]

[**SEC. 1.**] [**Vocational education — promotion — cooperation with state — appropriation.**] That there is hereby annually appropriated, out of any money in the Treasury not otherwise appropriated, the sums provided in sections two, three, and four of this Act, to be paid to the respective States for the purpose of cooperating with the States in paying the salaries of teachers, supervisors, and directors of agricultural subjects, and teachers of trade, home economics, and industrial subjects, and in the preparation of teachers of agricultural, trade, industrial, and home economic subjects; and the sum provided for in section seven for the use of the Federal Board of Vocational Education for the administration of this Act and for the purpose of making studies, investigations, and reports to aid in the organization and conduct of vocational education, which sums shall be expended as hereinafter provided. [*39 Stat. L. 929.*]

SEC. 2. [Agricultural subjects — salaries of teachers, etc.— amount of appropriation — allotment.] That for the purpose of cooperating with the States in paying the salaries of teachers, supervisors, or directors of agricultural subjects there is hereby appropriated for the use of the States, subject to the provisions of this Act, for the fiscal year ending June thirtieth, nineteen hundred and eighteen, the sum of \$500,000; for the fiscal year ending June thirtieth, nineteen hundred and nineteen, the sum of \$750,000; for the fiscal year ending June thirtieth, nineteen hundred and twenty, the sum of \$1,000,000; for the fiscal year ending June thirtieth, nineteen hundred and twenty-one, the sum of \$1,250,000; for the fiscal year ending June thirtieth, nineteen hundred and twenty-two, the sum of \$1,500,000; for the fiscal year ending June thirtieth, nineteen hundred and twenty-three, the sum of \$1,750,000; for the fiscal year ending June thirtieth, nineteen hundred and twenty-four, the sum of \$2,000,000; for the fiscal year ending June thirtieth, nineteen hundred and twenty-five, the sum of \$2,500,000; for the fiscal year ending June thirtieth, nineteen hundred and twenty-six, and annually thereafter, the sum of \$3,000,000. Said sums shall be allotted to the States in the proportion which their rural population bears to the total rural population in the United States, not including outlying possessions, according to the last preceding United States census: *Provided*, That the allotment of funds to any State shall be not less than a minimum of \$5,000 for any fiscal year prior to and including the fiscal year ending June thirtieth, nineteen hundred and twenty-three, nor less than \$10,000 for any fiscal year thereafter, and there is hereby appropriated the following sums, or so much thereof as may be necessary, which shall be used for the purpose of providing the minimum allotment to the States provided for in this section: For the fiscal year ending June thirtieth, nineteen hundred and eighteen, the sum of \$48,000; for the fiscal year ending June thirtieth, nineteen hundred and nineteen, the sum of \$34,000; for the fiscal year ending June thirtieth, nineteen hundred and twenty, the sum of \$24,000; for the fiscal year ending June thirtieth, nineteen hundred and twenty-one, the sum of \$18,000; for the fiscal year ending June thirtieth, nineteen hundred and twenty-two, the sum of \$14,000; for the fiscal year ending June thirtieth, nineteen hundred and twenty-three, the sum of \$11,000; for the fiscal year ending June thirtieth, nineteen hundred and twenty-four, the sum of \$9,000; for the fiscal year ending June thirtieth, nineteen hundred and twenty-five, the sum of \$34,000; and annually thereafter the sum of \$27,000. [39 Stat. L. 930.]

SEC. 3. [Home economics and industrial subjects — salaries of teachers, etc.— amount of appropriation — allotment.] That for the purpose of cooperating with the States in paying the salaries of teachers of trade, home economics, and industrial subjects there is hereby appropriated for the use of the States, for the fiscal year ending June thirtieth, nineteen hundred and eighteen, the sum of \$500,000; for the fiscal year ending June thirtieth, nineteen hundred and nineteen, the sum of \$750,000; for the fiscal year ending June thirtieth, nineteen hundred and twenty, the sum of \$1,000,000; for the fiscal year ending June thirtieth, nineteen hundred and twenty-one, the sum of \$1,250,000; for the fiscal year ending June thirtieth, nineteen hundred and twenty-two, the sum of \$1,500,000; for

the fiscal year ending June thirtieth, nineteen hundred and twenty-three, the sum of \$1,750,000; for the fiscal year ending June thirtieth, nineteen hundred and twenty-four, the sum of \$2,000,000; for the fiscal year ending June thirtieth, nineteen hundred and twenty-five, the sum of \$2,500,000; for the fiscal year ending June thirtieth, nineteen hundred and twenty-six, the sum of \$3,000,000; and annually thereafter the sum of \$3,000,000. Said sums shall be allotted to the States in the proportion which their urban population bears to the total urban population in the United States, not including outlying possessions, according to the last preceding United States census: *Provided*, That the allotment of funds to any State shall be not less than a minimum of \$5,000 for any fiscal year prior to and including the fiscal year ending June thirtieth, nineteen hundred and twenty-three, nor less than \$10,000 for any fiscal year thereafter, and there is hereby appropriated the following sums, or so much thereof as may be needed, which shall be used for the purpose of providing the minimum allotment to the States provided for in this section: For the fiscal year ending June thirtieth, nineteen hundred and eighteen, the sum of \$66,000; for the fiscal year ending June thirtieth, nineteen hundred and nineteen, the sum of \$46,000; for the fiscal year ending June thirtieth, nineteen hundred and twenty, the sum of \$34,000; for the fiscal year ending June thirtieth, nineteen hundred and twenty-one, the sum of \$28,000; for the fiscal year ending June thirtieth, nineteen hundred and twenty-two, the sum of \$25,000; for the fiscal year ending June thirtieth, nineteen hundred and twenty-three, the sum of \$22,000; for the fiscal year ending June thirtieth, nineteen hundred and twenty-four, the sum of \$19,000; for the fiscal year ending June thirtieth, nineteen hundred and twenty-five, the sum of \$56,000; for the fiscal year ending June thirtieth, nineteen hundred and twenty-six, and annually thereafter, the sum of \$50,000.

That not more than twenty per centum of the money appropriated under this act for the payment of salaries of teachers of trade, home economics, and industrial subjects, for any year, shall be expended for the salaries of teachers of home economic subjects. [39 Stat. L. 930.]

SEC. 4. [Training teachers, etc.—amount of appropriation—allotment.] That for the purpose of cooperating with the States in preparing teachers, supervisors, and directors of agricultural subjects and teachers of trade and industrial and home economic subjects there is hereby appropriated for the use of the States for the fiscal year ending June thirtieth, nineteen hundred and eighteen, the sum of \$500,000; for the fiscal year ending June thirtieth, nineteen hundred and nineteen, the sum of \$700,000; for the fiscal year ending June thirtieth, nineteen hundred and twenty, the sum of \$900,000; for the fiscal year ending June thirtieth, nineteen hundred and twenty-one, and annually thereafter, the sum of \$1,000,000. Said sums shall be allotted to the States in the proportion which their population bears to the total population of the United States, not including outlying possessions, according to the last preceding United States census: *Provided*, That the allotment of funds to any State shall be not less than a minimum of \$5,000 for any fiscal year prior to and including the fiscal year ending June thirtieth, nineteen hundred and nineteen, nor less than \$10,000 for any fiscal year thereafter. And there is hereby appropriated

the following sums, or so much thereof as may be needed, which shall be used for the purpose of providing the minimum allotment provided for in this section: For the fiscal year ending June thirtieth, nineteen hundred and eighteen, the sum of \$46,000; for the fiscal year ending June thirtieth, nineteen hundred and nineteen, the sum of \$32,000; for the fiscal year ending June thirtieth, nineteen hundred and twenty, the sum of \$24,000; for the fiscal year ending June thirtieth, nineteen hundred and twenty-one, and annually thereafter, the sum of \$90,000. [39 Stat. L. 931.]

SEC. 5. [Benefits of appropriations — how secured by state — state board.] That in order to secure the benefits of the appropriations provided for in sections two, three, and four of this Act, any State shall, through the legislative authority thereof, accept the provisions of this Act and designate or create a State board, consisting of not less than three members, and having all necessary power to cooperate, as herein provided, with the Federal Board for Vocational Education in the administration of the provisions of this Act. The State board of education, or other board having charge of the administration of public education in the State, or any State board having charge of the administration of any kind of vocational education in the State may, if the State so elect, be designated as the State board, for the purposes of this Act.

In any State the legislature of which does not meet in nineteen hundred and seventeen, if the governor of that State, so far as he is authorized to do so, shall accept the provisions of this Act and designate or create a State board of not less than three members to act in cooperation with the Federal Board for Vocational Education, the Federal board shall recognize such local board for the purposes of this Act until the legislature of such State meets in due course and has been in session sixty days.

Any State may accept the benefits of any one or more of the respective funds herein appropriated, and it may defer the acceptance of the benefits of any one or more of such funds, and shall be required to meet only the conditions relative to the fund or funds the benefits of which it has accepted: *Provided*, That after June thirtieth, nineteen hundred and twenty, no State shall receive any appropriation for salaries of teachers, supervisors, or directors of agricultural subjects, until it shall have taken advantage of at least the minimum amount appropriated for the training of teachers, supervisors, or directors of agricultural subjects, as provided for in this Act, and that after said date no State shall receive any appropriation for the salaries of teachers of trade, home economics, and industrial subjects until it shall have taken advantage of at least the minimum amount appropriated for the training of teachers of trade, home economics, and industrial subjects, as provided for in this Act. [39 Stat. L. 931.]

See further the Act of Oct. 6, 1917, ch. —, *infra*, p. 163

SEC. 6. [Federal Board for Vocational Education — creation — membership — salaries — duties and powers.] That a Federal Board for Vocational Education is hereby created, to consist of the Secretary of Agriculture, the Secretary of Commerce, the Secretary of Labor, the United States Commissioner of Education, and three citizens of the United States to be appointed by the President, by and with the advice and consent of

the Senate. One of said three citizens shall be a representative of the manufacturing and commercial interests, one a representative of the agricultural interests, and one a representative of labor. The board shall elect annually one of its members as chairman. In the first instance, one of the citizen members shall be appointed for one year, one for two years, and one for three years, and thereafter for three years each. The members of the board other than the members of the Cabinet and the United States Commissioner of Education shall receive a salary of \$5,000 per annum.

The board shall have power to cooperate with State boards in carrying out the provisions of this Act. It shall be the duty of the Federal Board for Vocational Education to make, or cause to have made studies, investigations, and reports, with particular reference to their use in aiding the States in the establishment of vocational schools and classes and in giving instruction in agriculture, trades and industries, commerce and commercial pursuits, and home economics. Such studies, investigations, and reports shall include agriculture and agricultural processes and requirements upon agricultural workers; trades, industries, and apprenticeships, trade and industrial requirements upon industrial workers, and classification of industrial processes and pursuits; commerce and commercial pursuits and requirements upon commercial workers; home management, domestic science, and the study of related facts and principles; and problems of administration of vocational schools and of courses of study and instruction in vocational subjects.

When the board deems it advisable such studies, investigations, and reports concerning agriculture, for the purposes of agricultural education, may be made in cooperation with or through the Department of Agriculture; such studies, investigations, and reports concerning trades and industries, for the purposes of trade and industrial education, may be made in cooperation with or through the Department of Labor; such studies, investigations, and reports concerning commerce and commercial pursuits, for the purposes of commercial education, may be made in cooperation with or through the Department of Commerce; such studies, investigations, and reports concerning the administration of vocational schools, courses of study and instruction in vocational subjects, may be made in cooperation with or through the Bureau of Education.

The Commissioner of Education may make such recommendations to the board relative to the administration of this Act as he may from time to time deem advisable. It shall be the duty of the chairman of the board to carry out the rules, regulations, and decisions which the board may adopt. The Federal Board for Vocational Education shall have power to employ such assistants as may be necessary to carry out the provisions of this Act. [39 Stat. L. 932.]

SEC. 7. [Federal Board for Vocational Education — annual appropriation.] That there is hereby appropriated to the Federal Board for Vocational Education the sum of \$200,000 annually, to be available from and after the passage of this Act, for the purpose of making or cooperating in making the studies, investigations, and reports provided for in section six of this Act, and for the purpose of paying the salaries of the officers, the assistants, and such office and other expenses as the board may deem

necessary to the execution and administration of this Act. [39 Stat. L. 933.]

See further the Act of Oct. 6, 1917, ch. —, *infra*, p. 163.

SEC. 8. [State board — submission of plans to Federal board — annual reports.] That in order to secure the benefits of the appropriation for any purpose specified in this Act, the State board shall prepare plans, showing the kinds of vocational education for which it is proposed that the appropriation shall be used; the kinds of schools and equipment; courses of study; methods of instruction; qualifications of teachers; and, in the case of agricultural subjects the qualifications of supervisors or directors; plans for the training of teachers; and, in the case of agricultural subjects, plans for the supervision of agricultural education, as provided for in section ten. Such plans shall be submitted by the State board to the Federal Board for Vocational Education, and if the Federal board finds the same to be in conformity with the provisions and purposes of this Act, the same shall be approved. The State board shall make an annual report to the Federal Board for Vocational Education, on or before September first of each year, on the work done in the State and the receipts and expenditures of money under the provisions of this Act. [39 Stat. L. 933.]

SEC. 9. [Appropriation for home economics and industrial subjects — how expended — expense borne by State.] That the appropriation for the salaries of teachers, supervisors, or directors of agricultural subjects and of teachers of trade, home economics, and industrial subjects shall be devoted exclusively to the payment of salaries of such teachers, supervisors, or directors having the minimum qualifications set up for the State by the State board, with the approval of the Federal Board for Vocational Education. The cost of instruction supplementary to the instruction in agricultural and in trade, home economics, and industrial subjects provided for in this Act, necessary to build a well-rounded course of training, shall be borne by the State and local communities, and no part of the cost thereof shall be borne out of the appropriations herein made. The moneys expended under the provisions of this Act, in cooperation with the States, for the salaries of teachers, supervisors, or directors of agricultural subjects, or for the salaries of teachers of trade, home economics, and industrial subjects, shall be conditioned that for each dollar of Federal money expended for such salaries the State or local community, or both, shall expend an equal amount for such salaries; and that appropriations for the training of teachers of vocational subjects, as herein provided, shall be conditioned that such money be expended for maintenance of such training and that for each dollar of Federal money so expended for maintenance, the State or local community, or both, shall expend an equal amount for the maintenance of such training. [39 Stat. L. 933.]

SEC. 10. [Appropriation for agricultural purposes — how expended — character of instruction — expense borne by State — qualifications of teachers.] That any State may use the appropriation for agricultural purposes, or any part thereof allotted to it, under the provisions of this Act, for the salaries of teachers, supervisors, or directors of agricultural

subjects, either for the salaries of teachers of such subjects in schools or classes or for the salaries of supervisors or directors of such subjects under a plan of supervision for the State to be set up by the State board, with the approval of the Federal Board for Vocational Education. That in order to receive the benefits of such appropriation for the salaries of teachers, supervisors, or directors of agricultural subjects the State board of any State shall provide in its plan for agricultural education that such education shall be that which is under public supervision or control; that the controlling purpose of such education shall be to fit for useful employment; that such education shall be of less than college grade and be designed to meet the needs of persons over fourteen years of age who have entered upon or who are preparing to enter upon the work of the farm or of the farm home; that the State or local community, or both, shall provide the necessary plant and equipment determined upon by the State board, with the approval of the Federal Board for Vocational Education, as the minimum requirement for such education in schools and classes in the State; that the amount expended for the maintenance of such education in any school or class receiving the benefit of such appropriation shall be not less annually than the amount fixed by the State board, with the approval of the Federal board as the minimum for such schools or classes in the State; that such schools shall provide for directed or supervised practice in agriculture, either on a farm provided for by the school or other farm, for at least six months per year; that the teachers, supervisors, or directors of agricultural subjects shall have at least the minimum qualifications determined for the State by the State board, with the approval of the Federal Board for Vocational Education. [39 Stat. L. 934.]

SEC. 11. [Trade, home economics and industrial subjects — character of instruction.] That in order to receive the benefits of the appropriation for the salaries of teachers of trade, home economics, and industrial subjects the State board of any State shall provide in its plan for trade, home economics, and industrial education that such education shall be given in schools or classes under public supervision or control; that the controlling purpose of such education shall be to fit for useful employment; that such education shall be of less than college grade and shall be designed to meet the needs of persons over fourteen years of age who are preparing for a trade or industrial pursuit or who have entered upon the work of a trade or industrial pursuit; that the State or local community, or both, shall provide the necessary plant and equipment determined upon by the State board, with the approval of the Federal Board for Vocational Education, as the minimum requirement in such State for education for any given trade or industrial pursuit; that the total amount expended for the maintenance of such education in any school or class receiving the benefit of such appropriation shall be not less annually than the amount fixed by the State board, with the approval of the Federal board, as the minimum for such schools or classes in the State; that such schools or classes giving instruction to persons who have not entered upon employment shall require that at least half of the time of such instruction be given to practical work on a useful or productive basis, such instruction to extend over not less than nine months per year and not less than thirty hours per week; that at least one-third of the sum appropriated to any State for the salaries of teachers of

trade, home economics, and industrial subjects shall, if expended, be applied to part-time schools or classes for workers over fourteen years of age who have entered upon employment, and such subjects in a part-time school or class may mean any subject given to enlarge the civic or vocational intelligence of such workers over fourteen and less than eighteen years of age; that such part-time schools or classes shall provide for not less than one hundred and forty-four hours of classroom instruction per year; that evening industrial schools shall fix the age of sixteen years as a minimum entrance requirement and shall confine instruction to that which is supplemental to the daily employment; that the teachers of any trade or industrial subject in any State shall have at least the minimum qualifications for teachers of such subject determined upon for such State by the State board, with the approval of the Federal Board for Vocational Education: *Provided*, That for cities and towns of less than twenty-five thousand population, according to the last preceding United States census, the State board, with the approval of the Federal Board for Vocational Education, may modify the conditions as to the length of course and hours of instruction per week for schools and classes giving instruction to those who have not entered upon employment, in order to meet the particular needs of such cities and towns. [39 Stat. L. 934.]

SEC. 12. [Training of teachers, etc.—character of instruction.] That in order for any State to receive the benefits of the appropriation in this Act for the training of teachers, supervisors, or directors of agricultural subjects, or of teachers of trade, industrial or home economics subjects, the State board of such State shall provide in its plan for such training that the same shall be carried out under the supervision of the State board; that such training shall be given in schools or classes under public supervision or control; that such training shall be given only to persons who have had adequate vocational experience or contact in the line of work for which they are preparing themselves as teachers, supervisors, or directors, or who are acquiring such experience or contact as a part of their training; and that the State board, with the approval of the Federal board, shall establish minimum requirements for such experience or contact for teachers, supervisors, or directors of agricultural subjects and for teachers of trade, industrial, and home economics subjects; that not more than sixty per centum nor less than twenty per centum of the money appropriated under this Act for the training of teachers of vocational subjects to any State for any year shall be expended for any one of the following purposes: For the preparation of teachers, supervisors, or directors of agricultural subjects, or the preparation of teachers of trade and industrial subjects, or the preparation of teachers of home economics subjects. [39 Stat. L. 935.]

SEC. 13. [Custodian for appropriations.] That in order to secure the benefits of the appropriations for the salaries of teachers, supervisors, or directors of agricultural subjects, or for the salaries of teachers of trade, home economics, and industrial subjects, or for the training of teachers as herein provided, any State shall, through the legislative authority thereof, appoint as custodian for said appropriations its State Treasurer, who shall

receive and provide for the proper custody and disbursements of all money paid to the State from said appropriations. [39 Stat. L. 935.]

SEC. 14. [Ascertainment of amount of appropriation due each state — certification — payment — disbursements by State boards.] That the Federal Board for Vocational Education shall annually ascertain whether the several States are using, or are prepared to use, the money received by them in accordance with the provisions of this Act. On or before the first day of January of each year the Federal Board for Vocational Education shall certify to the Secretary of the Treasury each State which has accepted the provisions of this Act and complied therewith, certifying the amounts which each State is entitled to receive under the provisions of this Act. Upon such certification the Secretary of the Treasury shall pay quarterly to the custodian for vocational education of each State the moneys to which it is entitled under the provisions of this Act. The moneys so received by the custodian for vocational education for any State shall be paid out on the requisition of the State board as reimbursement for expenditures already incurred to such schools as are approved by said State board and are entitled to receive such moneys under the provisions of this Act. [39 Stat. L. 935.]

SEC. 15. [Fund allotted to state partially unexpended — effect.] That whenever any portion of the fund annually allotted to any State has not been expended for the purpose provided for in this Act, a sum equal to such portion shall be deducted by the Federal board from the next succeeding annual allotment from such fund to such State. [39 Stat. L. 936.]

SEC. 16. [Withholding allotment of moneys from state — when warranted — appeal.] That the Federal Board for Vocational Education may withhold the allotment of moneys to any State whenever it shall be determined that such moneys are not being expended for the purposes and under the conditions of this Act.

If any allotment is withheld from any State, the State board of such State may appeal to the Congress of the United States, and if the Congress shall not direct such sum to be paid it shall be covered into the Treasury. [39 Stat. L. 936.]

SEC. 17. [Portion of moneys paid state diminished or lost — replacement by state — prohibition of use of federal appropriation for certain purposes.] That if any portion of the moneys received by the custodian for vocational education of any State under this Act, for any given purpose named in this Act, shall, by any action or contingency, be diminished or lost, it shall be replaced by such State, and until so replaced no subsequent appropriation for such education shall be paid to such State. No portion of any moneys appropriated under this Act for the benefit of the States shall be applied, directly or indirectly, to the purchase, erection, preservation, or repair of any building or buildings or equipment, or for the purchase or rental of lands, or for the support of any religious or privately owned or conducted school or college. [39 Stat. L. 936.]

SEC. 18. [Annual report by Federal Board.] That the Federal Board for Vocational Education shall make an annual report to Congress, on or before December first, on the administration of this Act and shall include in such report the reports made by the State boards on the administration of this Act by each State and the expenditure of the money allotted to each State. [39 Stat. L. 936.]

[SEC. 1.] [Vocational Education Act—appropriation—for what available—failure of state to accept provisions of act.] * * * The appropriation provided by section seven of the Act creating the Federal Board for Vocational Education, approved February twenty-third, nineteen hundred and seventeen, is also made available for printing and binding, law books, books of reference and periodicals, and postage on foreign mail.

In any State the legislature of which met in nineteen hundred and seventeen and failed for any reason to accept the provisions of the vocational education Act, as provided in section five of said Act, if the governor of that State, so far as he is authorized to do so, shall accept the provisions of said Act and designate or create a State board of not less than three members to act in cooperation with the Federal Board for Vocational Education and shall designate the State treasurer as custodian for all moneys allotted to that State under said Act, the Federal board shall, if such legislature took no adverse action on the acceptance of said Act in nineteen hundred and seventeen, recognize such State board for the purposes of said Act until the legislature of that State meets in regular session in due course and has been in session sixty days. [— Stat. L. —.]

This is from the Deficiencies Appropriations Act of Oct. 6, 1917, ch. —.

The Act of Feb. 23, 1917, ch. 114, §§ 7 and 5, mentioned in the text, is given *supra*, pp. 158, 157.

[SEC. 1.] [Soldiers and sailors—special instruction in District of Columbia school's.] * * * Soldiers and sailors of the United States not residents of the District of Columbia who are on duty at stations adjacent to the District of Columbia shall be admitted for special instruction to the day schools and night schools of the District of Columbia without payment of tuition. [— Stat. L. —.]

This is from the Deficiencies Appropriations Act of March 28, 1918, ch. —.

EIGHT HOUR DAY

See RAILROADS

ELECTRICITY

Act of July 9, 1918, ch. —, 164.

Chapter XXIV.

Sec. 1. Condemnation of Property for Generating Electric Energy, 164.

2. Submission of Plans — Approval — Public Lands — Bond, 164.

3. Possession and Use of Property and Rights, 165.

4. Termination of War — Effect, 165.

CHAPTER XXIV.

[SEC. 1.] [Condemnation of property for generating electric energy.]

That during the pendency of the present war, any person, association, or corporation, for the purpose of furnishing electric power to the United States or to persons, associations, or corporations engaged in the manufacture of ships, explosives, or munitions of war, or other articles and things for the use of the United States or its allies, upon compliance with the conditions hereinafter set forth, may institute proceedings in any district court of the United States or in any court of any State having jurisdiction of the property to be condemned, for the acquirement by condemnation of any land, the temporary use thereof, or other interest therein, or right pertaining thereto, required for the location or construction of any line or lines for the transmission of electric power for the operation of any plants which are or may be employed in the production of the articles and things hereinbefore mentioned: *Provided*, That nothing herein shall be construed to authorize the appropriation of any property already devoted to such use. That proceedings for the condemnation of property required for the generation and transmission of such electric power shall be prosecuted in accordance with the procedure prescribed for the condemnation of property in the State wherein the proceedings may be instituted. [— *Stat. L.* —.]

The foregoing section 1 and the following sections 2-4 constitute chapter XXIV of the Army Appropriation Act of July 9, 1918, ch. —.

SEC. 2. [Submission of plans — approval — public lands — bond.]

That before any person, association, or corporation, furnishing or to furnish electric power for the purposes mentioned in section one of this Act, shall have the right to institute proceedings for condemnation, they shall submit to the Secretary of War a full and complete statement of the plan for furnishing power and the nature and extent of the easements or property which they desire to acquire under condemnation proceedings, for the purposes stated in the preceding section. If the Secretary of War approves such plan and finds that the construction or extension of such facilities for the generation or transmission of power and that the condemnation herein authorized is necessary to increase the supply of power for the objects and purposes stated in section one of this Act, then such person, association, or corporation shall, upon the approval of such plan by the Secretary of War, have the right to construct, maintain, and

operate the facilities described in such plan, and may cause proceedings to be instituted in any court having jurisdiction thereof for the acquirement by condemnation of any lands, the temporary use thereof, or other interest therein, or right pertaining thereto, as may be needed for the construction, maintenance, and operation of such facilities: *Provided*, That nothing in this section shall be construed as authorizing any rights in any public lands of the United States, or in any waters of the United States except such as may be necessary to build such transmission lines along or across said waters as may be approved by the Secretary of War: *Provided further*, That the Secretary of War may, prior to granting his approval as above set forth, require such person, association, or corporation to file with him a bond, in an amount and with a surety or sureties satisfactory to him, conditioned upon the prompt construction of the proposed facilities and the diligent maintenance and operation of the same to the satisfaction of the Secretary of War during the present war. [— *Stat. L.* —.]

SEC. 3. [Possession and use of property and rights.] That any person, association, or corporation having secured the approval of the Secretary of War and filed a petition for condemnation as herein provided may, upon filing with the court in which such petition is filed a bond to secure payment of just compensation to the owners of property taken, in a form and an amount and with a surety or sureties approved by said court after such notice and such hearing as the court may prescribe, have the right of immediate possession and use of such property or rights. [— *Stat. L.* —.]

SEC. 4. [Termination of war — effect.] That no plan for the construction or extension of any facilities shall be submitted to or approved by the Secretary of War hereunder after the existing state of war between the United States and its enemies shall have terminated, and the fact of such termination shall be ascertained and proclaimed by the President, but such termination of the existing state of war so ascertained and proclaimed shall not interfere with the condemnation of any land or other property or rights needed for the construction, maintenance, and operation of any facilities approved hereunder by the Secretary of War before such proclamation: *Provided, however*, That the Secretary of War may upon such termination of the existing state of war and prior to the entry of judgment in any condemnation proceeding hereunder and the commencement of construction or extension of the proposed facilities revoke any approval given hereunder to the plan for such proposed facilities: *Provided further*, That nothing in this chapter shall be construed as granting any franchise to utilize such facilities after the termination of the existing state of war.

That all Acts or parts of Acts inconsistent with the provisions of this Act are hereby repealed. [— *Stat. L.* —.]

EMINENT DOMAIN

Act of July 2, 1917, ch. —, 166.

Lands for Military Purposes — Condemnation — Nitrate Plants — Munition Plants, 166.

Act of July 9, 1918, ch. —, 167.

Chapter XV.

Sec. 8. Condemnation of Timber, Products and Equipment — Former Act Extended, 167.

An Act To authorize condemnation proceedings of lands for military purposes.

[*Act of July 2, 1917, ch. —, — Stat. L. —.*]

[**Lands for military purposes — condemnation — nitrate plants — munition plants.**] That hereafter the Secretary of War may cause proceedings to be instituted in the name of the United States, in any court having jurisdiction of such proceedings for the acquirement by condemnation of any land, temporary use thereof or other interest therein, or right pertaining thereto, needed for the site, location, construction, or prosecution of works for fortifications, coast defenses, military training camps, and for the construction and operation of plants for the production of nitrate and other compounds and the manufacture of explosives and other munitions of war and for the development and transmission of power for the operations of such plants; such proceedings to be prosecuted in accordance with the laws relating to suits for the condemnation of property of the States wherein the proceedings may be instituted: *Provided*, That when the owner of such land, interest, or rights pertaining thereto shall fix a price for the same, which in the opinion of the Secretary of War shall be reasonable, he may purchase or enter into a contract for the use of the same at such price without further delay: *Provided further*, That the Secretary of War is hereby authorized to accept on behalf of the United States donations of land and the interest and rights pertaining thereto required for the above mentioned purposes: *And provided further*, That when such property is acquired in time of war, or the imminence thereof, upon the filing of the petition for the condemnation of any land, temporary use thereof or other interest therein or right pertaining thereto to be acquired for any of the purposes aforesaid, immediate possession thereof may be taken to the extent of the interest to be acquired and the lands may be occupied and used for military purposes, and the provision of section three hundred and fifty-five of the Revised Statutes, providing that no public money shall be expended upon such land until the written opinion of the Attorney General shall be had in favor of the validity of the title, nor until the consent of the legislature of the State in which the land is located has been given, shall be, and the same are hereby, suspended during the period of the existing emergency. [— *Stat. L. —. As amended by — Stat. L. —.*]

This Act was amended by the Act of April 11, 1918, ch. —, by adding after the word "camps" where it first appears the following: "and for the construction and operation of plants for the production of nitrates and other compounds and the

manufacture of explosives and other munitions of war and for the development and transmission of power for the operation of such plants," causing it to read as here given.

For R. S. sec. 355, mentioned in the text, see 6 Fed. Stat. Ann. 695; 8 Fed. Stat. Ann. (2d ed.) 1105.

See the following paragraph of the text.

SEC. 8. [Condemnation of timber, products and equipment—former Act extended.] That the Act entitled "An Act to authorize condemnation proceedings of lands for military purposes," approved July second, nineteen hundred and seventeen, as amended by an Act approved April eleventh, nineteen hundred and eighteen, be, and the same is hereby, amended, and its provisions in all respects together with all its privileges and benefits are hereby extended to the right of condemnation of standing or fallen timber, sawmills, camps, machinery, logging roads, rights of way, equipment, materials, supplies, and any works, property, or appliances suitable for the effectual production of such lumber and timber products, for the Army, Navy, United States Shipping Board, or the United States Shipping Board Emergency Fleet Corporation. That the right to institute such condemnation proceedings is hereby conferred upon the Secretary of War, the Secretary of the Navy, and the Chairman of the United States Shipping Board and the United States Shipping Board Emergency Fleet Corporation, individually or collectively. Such right of condemnation shall be exercised by such officials only for the purpose of obtaining such property when needed for the production, manufacture, or building aircraft, dry-docks, or vessels, their apparel or furniture, for housing of Government employees in connection with the Army, Navy, or the United States Shipping Board and the United States Shipping Board Emergency Fleet Corporation, and for the procurement of materials and equipment for aircraft, dry-docks and vessels. The jurisdiction of such condemnation proceedings is hereby vested in the District Courts of the United States, where the property which is sought to be condemned or any part thereof is located or situated, regardless of the value of the same.

And the President is hereby authorized through any department or the United States Shipping Board or said Fleet Corporation to sell and dispose of any lands or interests in real estate acquired for the production of lumber and timber products, and to sell any logs, manufactured or partly manufactured or otherwise procured for the Army, Navy, or United States Shipping Board Emergency Fleet Corporation, or resulting from such manufacture or procurement, either to individuals, corporations or foreign states or governments, at such price as he shall determine acting through his above representatives selling or disposing of the same, and the proceeds of such sale shall be returned to the appropriations which bore the expense of such procurement. [— *Stat. L.* —.]

This is a part of section 8 of chapter XV of the Army Appropriation Act of July 9, 1918, ch. —.

The Act of July 2, 1917, ch. —, mentioned in this section, is given in the preceding paragraph of the text.

ESPIONAGE ACT

See CRIMINAL LAW

ESTATE TAX

See INTERNAL REVENUE

ESTIMATES, APPROPRIATIONS AND REPORTS

Act of July 1, 1916, ch. 209, 168.

Sec. 4. Annual Book of Estimates — Submission of Information — Method, 168.

CROSS-REFERENCE

Estimates and Reports as to Indian Affairs, see INDIANS.

SEC. 4. [Annual book of estimates—submission of information—method.] That the information required in connection with estimates for general or lump-sum appropriations by section ten of the sundry civil appropriation Act, approved August first, nineteen hundred and fourteen, shall be submitted hereafter according to uniform and concise methods which shall be prescribed by the Secretary of the Treasury, but with reference to estimates for pay of mechanics and laborers there shall be submitted in detail only the ratings and trades and the rates per diem paid or to be paid. [39 Stat. L. 336.]

This is from the Sundry Civil Appropriation Act of July 1, 1916, ch. 209.

For the Act of Aug. 1, 1914, ch. 223, § 10, mentioned in the text, which amended the Act of Aug. 24, 1912, ch. 355, § 6, see 1914 Supp. Fed. Stat. Ann. 49; 3 Fed. Stat. Ann. (2d ed.) 136.

EXCESS PROFITS TAX

See INTERNAL REVENUE

EXECUTIVE DEPARTMENTS

Act of Oct. 6, 1917, ch. —, 169.

Sec. 6. Transfer of Employees from One Department to Another — Shipping Board as Government Establishment, 169.

7. Compensation of Transferred Employees, 169.

Act of March 28, 1918, ch. —, 170.

Sec. 2. "Governmental Establishment"— District of Columbia, 170.

Act of May 20, 1918, ch. — ("Overman Bill"), 170.

Sec. 1. Redistribution of Functions Among Executive Agencies — Duration of Act — Limited to Present War, 170.

2. Consolidation of Bureaus, etc.— Transfer of Personnel, etc., 170.

3. Agency for Control of Aeroplanes, etc., 171.

4. Availability of Appropriations, 171.

5. Abolition of Agencies, etc.— Report, 171.

6. Repeal of Conflicting Laws — Termination of Act — Effect, 171.

Act of July 3, 1918, ch. —, 171.

Sec. 1. Employees — Detail to Office of President, 171.

4. Purchase of Typewriters, 172.

SEC. 6. [Transfer of employees from one department to another — shipping board as government establishment.] That section five of the Act of June twenty-second, nineteen hundred and six, prohibiting the transfer of employees from one executive department to another, shall apply with equal force and effect to the transfer of employees from executive departments to independent establishments and vice versa and to the transfer of employees from one independent establishment to another: *Provided*, That the United States Shipping Board Emergency Fleet Corporation shall be considered a Government establishment for the purposes of this section. [*— Stat. L. —.*]

This section 6 and the following section 7 are from the Deficiencies Appropriation Act of Oct. 6, 1917, ch. —.

For the Act of June 22, 1906, ch. 3514, § 5, mentioned in this section see 1909 Supp. Fed. Stat. Ann. 129; 3 Fed. Stat. Ann. (2d ed.) 262.

SEC. 7. [Compensation of transferred employees.] That no civil employee in any of the executive departments or other Government establishments, or who has been employed therein within the period of one year next preceding his proposed employment in any other executive department or other Government establishment, shall be employed hereafter and paid from a lump-sum appropriation in any other executive department or other Government establishment at an increased rate of compensation. And no civil employee in any of the executive departments or other Government establishments or who has been employed therein within the period of one year next preceding his proposed employment in any other executive department or other Government establishment and who may be employed in another executive department or other Government establishment shall be granted an increase in compensation within the period of one year following such reemployment: *Provided*, That the United States Shipping Board Emergency Fleet Corporation shall be considered a Government establish-

ment for the purposes of this section: *Provided further*, That this section shall not be construed to repeal section five of the Act of June twenty-second, nineteen hundred and six, which prohibits the transfer of employees from one department to another. [— *Stat. L.* —.]

See the note to the preceding § 6 of this Act.

For the Act of June 22, 1906, ch. 5514, § 5, mentioned in this section, see 1909 Supp. Fed. Stat. Ann. 120; 3 Fed. Stat. Ann. (2d ed.) 263.

SEC. 2. [“**Governmental Establishment**”—**District of Columbia.**] That all branches of the government of the District of Columbia shall be considered a governmental establishment for the purposes of section seven of the deficiency appropriation Act approved October sixth, nineteen hundred and seventeen. [— *Stat. L.* —.]

This is from the Deficiency Appropriation Act of March 28, 1918, ch. —.

The Act of Oct. 6, 1917, ch. —, § 7, is given in the preceding paragraph of the text.

An Act Authorizing the President to coordinate or consolidate executive bureaus, agencies, and offices, and for other purposes, in the interest of economy and the more efficient concentration of the Government.

[*Act of May 20, 1918, ch. —, — Stat. L.* —.]

[SEC. 1.] [Redistribution of functions among executive agencies — duration of Act — limited to present war.] That for the national security and defense, for the successful prosecution of the war, for the support and maintenance of the Army and Navy, for the better utilization of resources and industries, and for the more effective exercise and more efficient administration by the President of his powers as Commander in Chief of the land and naval forces the President is hereby authorized to make such redistribution of functions among executive agencies as he may deem necessary, including any functions, duties, and powers hitherto by law conferred upon any executive department, commission, bureau, agency, office, or officer, in such manner as in his judgment shall seem best fitted to carry out the purposes of this Act, and to this end is authorized to make such regulations and to issue such orders as he may deem necessary, which regulations and orders shall be in writing and shall be filed with the head of the department affected and constitute a public record: *Provided*, That this Act shall remain in force during the continuance of the present war and for six months after the termination of the war by the proclamation of the treaty of peace, or at such earlier time as the President may designate: *Provided further*, That the termination of this Act shall not affect any act done or any right or obligation accruing or accrued pursuant to this Act and during the time that this Act is in force: *Provided further*, That the authority by this Act granted shall be exercised only in matters relating to the conduct of the present war. [— *Stat. L.* —.]

This is known as the “Overman Bill.”

SEC. 2. [Consolidation of bureaus, etc.—transfer of personnel, etc.] That in carrying out the purposes of this Act the President is authorized

to utilize, coordinate, or consolidate any executive or administrative commissions, bureaus, agencies, offices, or officers now existing by law, to transfer any duties or powers from one existing department, commission, bureau, agency, office, or officer to another, to transfer the personnel thereof or any part of it either by detail or assignment, together with the whole or any part of the records and public property belonging thereto. [— *Stat. L.* —.]

SEC. 3. [Agency for control of aeroplanes, etc.] That the President is further authorized to establish an executive agency which may exercise such jurisdiction and control over the production of aeroplanes, aeroplane engines, and aircraft equipment as in his judgment may be advantageous; and, further, to transfer to such agency, for its use, all or any moneys heretofore appropriated for the production of aeroplanes, aeroplane engines, and aircraft equipment. [— *Stat. L.* —.]

SEC. 4. [Availability of appropriations.] That for the purpose of carrying out the provisions of this Act, any moneys heretofore and hereafter appropriated for the use of any executive department, commission, bureau, agency, office, or officer shall be expended only for the purposes for which it was appropriated under the direction of such other agency as may be directed by the President hereunder to perform and execute said function. [— *Stat. L.* —.]

SEC. 5. [Abolition of agencies, etc.—report.] That should the President, in redistributing the functions among the executive agencies as provided in this Act, conclude that any bureau should be abolished and it or their duties and functions conferred upon some other department or bureau or eliminated entirely, he shall report his conclusions to Congress with such recommendations as he may deem proper. [— *Stat. L.* —.]

SEC. 6. [Repeal of conflicting laws — termination of Act — effect.] That all laws or parts of laws conflicting with the provisions of this Act are to the extent of such conflict suspended while this Act is in force.

Upon the termination of this Act all executive or administrative agencies, departments, commissions, bureaus, offices, or officers shall exercise the same functions, duties, and powers as heretofore or as hereafter by law may be provided, any authorization of the President under this Act to the contrary notwithstanding. [— *Stat. L.* —.]

[SEC. 1.] [Employees — detail to office of President.] • • • That employees of the executive departments and other establishments of the executive branch of the Government may be detailed from time to time to the office of the President of the United States for such temporary assistance as may be necessary. [— *Stat. L.* —.]

This and the following paragraph of the text are from the Legislative, Executive and Judicial Appropriation Act of July 3, 1918, ch. —.

Provisions identical with those of this paragraph have appeared in similar Acts for prior years. See 3 Fed. Stat. Ann. (2d ed.) 263.

SEC. 4. [Purchase of typewriters.] That no part of any money appropriated by this or any other Act shall be used during the fiscal year nineteen hundred and nineteen for the purchase of any typewriting machine at a price in excess of the lowest price paid by the Government of the United States for the same make and substantially the same model of machine during the fiscal year nineteen hundred and seventeen; such price shall include the value of any typewriting machine or machines given in exchange, but shall not apply to special prices granted on typewriting machines used in schools of the District of Columbia or of the Indian Service, the lowest of which special prices paid for typewriting machines shall not be exceeded in future purchases for such schools: *Provided*, That in construing this section the Commissioner of Patents shall advise the Comptroller of the Treasury as to whether the changes in any typewriter are of such structural character as to constitute a new machine not within the limitations of this section. [— *Stat. L.* —]

See the note to the preceding paragraph of the text.

EXPLOSIVES

Act of Oct. 6, 1917, ch. —, 173.

Sec. 1. Explosives — Manufacture, Distribution, Storage, etc., During War, 173.

2. "Explosive" and "Explosives" Defined — Application of Act, 173.
3. "Ingredients" Defined, 173.
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5. Possession, Transfer, etc., of Explosives Forbidden — Exceptions — Use at Mines, Quarries, etc., 173.
6. Application of Act to Explosives, etc., Being Transported, 174.
7. License Required for Manufacture, 174.
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9. Records of Sales, etc., 174.
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13. Explosives Inspector — Appointment — Duties — Salary — Detail — Additional Employees, 176.
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Act of July 1, 1918, ch. —, 178.

Sec. 1. Cancellation of License, 178.

An Act To prohibit the manufacture, distribution, storage, use, and possession in time of war of explosives, providing regulations for the safe manufacture, distribution, storage, use, and possession of the same, and for other purposes.

[Act of Oct. 6, 1917, ch. —, — Stat. L. —.]

[SEC. 1.] [Explosives — manufacture, distribution, storage, etc., during war.] That when the United States is at war it shall be unlawful to manufacture, distribute, store, use, or possess powder, explosives, blasting supplies, or ingredients thereof, in such manner as to be detrimental to the public safety, except as in this Act provided. *[— Stat. L. —.]*

SEC. 2. [“ Explosive ” and “ explosives ” defined — application of Act.] That the words “ explosive ” and “ explosives ” when used herein shall mean gunpowders, powders used for blasting, all forms of high explosives, blasting materials, fuses, detonators, and other detonating agents, smokeless powders, and any chemical compound or mechanical mixture that contains any oxidizing and combustible units, or other ingredients, in such proportions, quantities or packing that ignition by fire, by friction, by concussion, by percussion, or by detonation of, or any part of the compound or mixture may cause such a sudden generation of highly heated gases that the resultant gaseous pressures are capable of producing destructive effects on contiguous objects, or of destroying life or limb, but shall not include small arms or shotgun cartridges: *Provided*, That nothing herein contained shall be construed to prevent the manufacture, under the authority of the Government, of explosives for, their sale to or their possession by, the military or naval service of the United States of America. *[— Stat. L. —.]*

SEC. 3. [“ Ingredients ” defined.] That the word “ ingredients ” when used herein shall mean the materials and substances capable by combination of producing one or more of the explosives mentioned in section one hereof. *[— Stat. L. —.]*

SEC. 4. [“ Person ” defined.] That the word “ person,” when used herein, shall include States, Territories, the District of Columbia, Alaska, and other dependencies of the United States, and municipal subdivisions thereof, individual citizens, firms, associations, societies and corporations of the United States and of other countries at peace with the United States. *[— Stat. L. —.]*

SEC. 5. [Possession, transfer, etc., of explosives forbidden — exceptions — use at mines, quarries, etc.] That from and after forty days after the passage and approval of this Act no person shall have in his possession or purchase, accept, receive, sell, give, barter or otherwise dispose of or pro-

cure explosives, or ingredients, except as provided in this Act: *Provided*, That the purchase or possession of said ingredients when purchased or held in small quantities and not used or intended to be used in the manufacture of explosives are not subject to the provisions of this Act: *Provided further*, That the superintendent, foreman, or other duly authorized employee, at a mine, quarry, or other work, may, when licensed so to do, sell or issue, to any workman under him, such an amount of explosives, or ingredients, as may be required by that workman in the performance of his duties, and the workman may purchase or accept the explosives, or ingredients, so sold or issued, but the person so selling or issuing same shall see that any unused explosives, or ingredients, are returned, and that no explosives, or ingredients, are taken by the workman to any point not necessary to the carrying on of his duties. [— *Stat. L.* —.]

SEC. 6. [Application of act to explosives, etc., being transported.] That nothing contained herein shall apply to explosives or ingredients while being transported upon vessels or railroad cars in conformity with statutory law or Interstate Commerce Commission rules. [— *Stat. L.* —.]

For provisions relating to the transportation of explosives, see CARRIERS, 1 Fed. Stat. Ann. 719, 2 Fed. Stat. Ann. (2d ed.) 17; PENAL LAWS, 1909 Supp. Fed. Stat. Ann. 470, 7 Fed. Stat. Ann. (2d ed.) 857.

SEC. 7. [License required for manufacture.] That from and after forty days after the passage of this Act no person shall manufacture explosives unless licensed so to do, as hereinafter provided. [— *Stat. L.* —.]

SEC. 8. [Disclosures as to business of licensee or applicant — exceptions.] That any licensee or applicant for license hereunder shall furnish such information regarding himself and his business, so far as such business relates to or is connected with explosives or ingredients at such time and in such manner as the Director of the Bureau of Mines, or his authorized representative, may request, excepting that those who have been or are at the time of the passage of this Act regularly engaged in the manufacture of explosives shall not be compelled to disclose secret processes, costs, or other data unrelated to the distribution of explosives. [— *Stat. L.* —.]

SEC. 9. [Records of sales, etc.] That from and after forty days after the passage and approval of this Act every person authorized to sell, issue, or dispose of explosives shall keep a complete itemized and accurate record, showing each person to whom explosives are sold, given, bartered, or to whom or how otherwise disposed of, and the quantity and kind of explosives, and the date of each such sale, gift, barter, or other disposition, and this record shall be sworn to and furnished to the Director of the Bureau of Mines, or his authorized representatives, whenever requested. [— *Stat. L.* —.]

SEC. 10. [Licenses — character.] That the Director of the Bureau of Mines is hereby authorized to issue licenses as follows:

(a) Manufacturer's license, authorizing the manufacture, possession, and sale of explosives or ingredients.

(b) Vendor's license, authorizing the purchase, possession, and sale of explosives or ingredients.

(c) Purchaser's license, authorizing the purchase and possession of explosives and ingredients.

(d) Foreman's license, authorizing the purchase and possession of explosives and ingredients, and the sale and issuance of explosives and ingredients to workmen under the proviso to section five above.

(e) Exporter's license, authorizing the licensee to export explosives, but no such license shall authorize exportation in violation of any proclamation of the President issued under any Act of Congress.

(f) Importer's license, authorizing the licensee to import explosives.

(g) Analyst's, educator's, investor's, and investigator's licenses authorizing the purchase, manufacture, possession, testing, and disposal of explosives and ingredients. [— *Stat. L.* —.]

SEC. 11. [Licenses — to whom issued — citizenship or loyalty of licensee — revocation — appeal.] That the Director of the Bureau of Mines shall issue licenses, upon application duly made, but only to citizens of the United States of America, and to the subjects or citizens of nations that are at peace with them, and to corporations, firms, and associations thereof, and he may, in his discretion, refuse to issue a license, when he has reason to believe, from facts of which he has knowledge or reliable information, that the applicant is disloyal or hostile to the United States of America, or that, if the applicant is a firm, association, society, or corporation, its controlling stockholders or members are disloyal or hostile to the United States of America. The director may, when he has reason to believe on like grounds that any licensee is so disloyal or hostile, revoke any license issued to him. Any applicant to whom a license is refused or any licensee whose license is revoked by the said director may, at any time within thirty days after notification of the rejection of his application or revocation of his license, apply for such license or the cancellation of such revocation to the Council of National Defense, which shall make its order upon the director either to grant or to withhold the license. [— *Stat. L.* —.]

SEC. 12. [Application for license—contents—where made—issuance—fees—records—removal of officers.] That any person desiring to manufacture, sell, export, import, store, or purchase explosives or ingredients, or to keep explosives or ingredients in his possession, shall make application for a license, which application shall state, under oath, the name of the applicant; the place of birth; whether native born or naturalized citizen of the United States of America; if a naturalized citizen, the date and place of naturalization; business in which engaged; the amount and kind of explosives or ingredients which during the past six months have been purchased, disposed of, or used by him; the amount and kind of explosives or ingredients now on hand; whether sales, if any, have been made to jobbers, wholesalers, retailers, or consumers; the kind of license to be issued, and the kind and amount of explosives or ingredients to be authorized by the license; and such further information as the Director of the Bureau of Mines may, by rule, from time to time require.

Applications for vendor's, purchaser's, or foreman's licenses shall be made to such officers of the State, Territory, or dependency having juris-

diction in the district within which the explosives or ingredients are to be sold or used, and having the power to administer oaths as may be designated by the Director of the Bureau of Mines, who shall issue the same in the name of such director. Such officers shall be entitled to receive from the applicant a fee of 25 cents for each license issued. They shall keep an accurate record of all licenses issued in manner and form to be prescribed by the Director of the Bureau of Mines, to whom they shall make reports from time to time as may be by rule issued by the director required. The necessary blanks and blank records shall be furnished to such officers by the said director. Licensing officers shall be subject to removal for cause by the Director of the Bureau of Mines, and all licenses issued by them shall be subject to revocation by the director as provided in section eleven. [— *Stat. L.* —.]

SEC. 13. [Explosives inspector — appointment — duties — salary — detail — additional employees.] That the President, by and with the advice and consent of the Senate, may appoint in each State and in Alaska an explosives inspector, whose duty it shall be, under the direction of the Director of the Bureau of Mines, to see that this Act is faithfully executed and observed. Each such inspector shall receive a salary of \$2,400 per annum. He may at any time be detailed for service by said director in the District of Columbia or in any State, Territory, or dependency of the United States. All additional employees required in carrying out the provisions of this Act shall be appointed by the Director of the Bureau of Mines, subject to the approval of the Secretary of the Interior. [— *Stat. L.* —.]

SEC. 14. [Misrepresentation as to existence or nature of license — refusal to exhibit license.] That it shall be unlawful for any person to represent himself as having a license issued under this Act, when he has not such a license, or as having a license different in form or in conditions from the one which he in fact has, or without proper authority make, cause to be made, issue or exhibit anything purporting or pretending to be such license, or intended to mislead any person into believing it is such a license, or to refuse to exhibit his license to any peace officer, Federal or State, or representative of the Bureau of Mines. [— *Stat. L.* —.]

SEC. 15. [Divulging information obtained from license or application.] That no inspector or other employee of the Bureau of Mines shall divulge any information obtained in the course of his duties under this Act regarding the business of any licensee, or applicant for license, without authority from the applicant for license or from the Director of the Bureau of Mines. [— *Stat. L.* —.]

SEC. 16. [Marking premises on which explosives, etc., are stored, etc.] That every person authorized under this Act to manufacture or store explosives or ingredients shall clearly mark and define the premises on which his plant or magazine may be and shall conspicuously display thereon the words "Explosives — Keep Off." [— *Stat. L.* —.]

SEC. 17. [Plants or premises, persons allowed in or upon — discharge of firearms, bombs, etc.] That no person, without the consent of the owner or his authorized agents, except peace officers, the Director of the Bureau of Mines and persons designated by him in writing, shall be in or upon any plant or premises on which explosives are manufactured or stored, or be in or upon any magazine premises on which explosives are stored; nor shall any person discharge any firearms or throw or place any explosives or inflammable bombs at, on, or against any such plant or magazine premises, or cause the same to be done. [— *Stat. L.* —.]

SEC. 18. [Rules and regulations.] That the Director of the Bureau of Mines is hereby authorized to make rules and regulations for carrying into effect this Act, subject to the approval of the Secretary of the Interior. [— *Stat. L.* —.]

SEC. 19. [Violation of act, rules, or regulations — penalty.] That any person violating any of the provisions of this Act, or any rules or regulations made thereunder, shall be guilty of a misdemeanor and shall be punished by a fine of not more than \$5,000 or by imprisonment not more than one year, or by both such fine and imprisonment. [— *Stat. L.* —.]

SEC. 20. [Fires, explosions, etc., where explosives are stored, etc.— investigations — authority.] That the Director of the Bureau of Mines is hereby authorized to investigate all explosions and fires which may occur in mines, quarries, factories, warehouses, magazines, houses, cars, boats, conveyances, and all places in which explosives or the ingredients thereof are manufactured, transported, stored, or used, and shall, in his discretion, report his findings, in such manner as he may deem fit, to the proper Federal or State authorities, to the end that if such explosion has been brought about by a willful act the person or persons causing such act may be proceeded against and brought to justice; or, if said explosion has been brought about by accidental means, that precautions may be taken to prevent similar accidents from occurring. In the prosecution of such investigations the employees of the Bureau of Mines are hereby granted the authority to enter the premises where such explosion or fire has occurred, to examine plans, books, and papers, to administer oaths to, and to examine all witnesses and persons concerned, without let or hindrance on the part of the owner, lessee, operator, or agent thereof. [— *Stat. L.* —.]

SEC. 21. [Agents to carry out provisions of Act.] That the Director of the Bureau of Mines, with the approval of the President, is hereby authorized to utilize such agents, agencies, and all officers of the United States and of the several States, Territories, dependencies, and municipalities thereof, and the District of Columbia, in the execution of this Act, and all agents, agencies, and all officers of the United States and of the several States and Territories, dependencies, and municipalities thereof, and the District of Columbia, shall hereby have full authority for all acts done by them in the execution of this Act when acting by the direction of the Bureau of Mines. [— *Stat. L.* —.]

SEC. 22. [Appropriation.] That for the enforcement of the provisions of this Act, including personal services in the District of Columbia and elsewhere, and including supplies, equipment, expenses of traveling and subsistence, and for the purchase and hire of animal-drawn or motor-propelled passenger-carrying vehicles, and upkeep of same, and for every other expense incident to the enforcement of the provisions of this Act, there is hereby appropriated, out of any money in the Treasury not otherwise appropriated, the sum of \$300,000, or so much thereof as may be necessary: *Provided*, That not to exceed \$10,000 shall be expended in the purchase of motor-propelled passenger-carrying vehicles. [*— Stat. L. —.*]

[**SEC. 1.] [Cancellation of license.]** * * * That any license issued under the Act of October sixth, nineteen hundred and seventeen, may be canceled by the Director of the Bureau of Mines if the person to whom such license was issued shall, after notice and an opportunity to be heard, be found to have violated any of the provisions of the Act. [*— Stat. L. —.*]

This is from the Sundry Civil Appropriation Act of July 1, 1918, ch. —, following an appropriation for the enforcement of the Explosives Act of Oct. 6, 1917, ch. —, given in the preceding paragraphs of the text.

EXPORTS

See IMPORTS AND EXPORTS; INTERNAL REVENUE; UNFAIR COMPETITION.

FALSE PERSONATION

Act of April 27, 1916, ch. 89, 178.

Sec. 1. False Personation — Prohibition, 178.

2. Time of Taking Effect of Act, 178.

An Act Prohibiting the use of the name of any Member of either House of Congress or of any officer of the Government by any person, firm, or corporation practicing before any department or office of the Government.

[*Act of April 27, 1916, ch. 89, 39 Stat. L. 54.*]

[**SEC. 1.] [False personation — prohibition.]** That it shall be unlawful for any person, firm, or corporation practicing before any department or office of the Government to use the name of any member of either House of Congress or of any officer of the Government in advertising the said business. [*39 Stat. L. 54.*]

SEC. 2. [Time of taking effect of Act.] That this Act shall take effect three months after its date. [*39 Stat. L. 54.*]

FARM LOANS

See AGRICULTURE; NATIONAL BANKS

FEDERAL BOARD FOR VOCATIONAL EDUCATION

See EDUCATION.

FEDERAL RESERVE ACT

See NATIONAL BANKS

FISH AND FISHERIES

Act of April 8, 1918, ch. —, 179.

Columbia River — Concurrent State Jurisdiction Over Waters, 179.

Act of July 1, 1918, ch. —, 180.

Sec. 1. Expenditure of Appropriations — Effect of State Laws and Privileges, 180.

Clothing and Small Stores for Crews of Vessels, 180.

Officers and Crews of Vessels — Commutation of Rations, 180.

Officers and Crews of Vessels — Benefits of Public Health Service, 180.

An Act To ratify the compact and agreement between the States of Oregon and Washington regarding concurrent jurisdiction over the waters of the Columbia River and its tributaries in connection with regulating, protecting, and preserving fish.

[*Act of April 8, 1918, ch. —, — Stat. L. —.*]

[**Columbia River — concurrent state jurisdiction over waters.**] That the Congress of the United States of America hereby consents to and ratifies the compact and agreement entered into between the States of Oregon and Washington relative to regulating, protecting, and preserving fish in the boundary waters of the Columbia River and other waters, which compact and agreement is contained in section twenty of chapter one hundred and eighty-eight of the general laws of Oregon for nineteen hun-

dred and fifteen, and section one hundred and sixteen, chapter thirty-one, of the session laws of Washington for nineteen hundred and fifteen, and is as follows:

“All laws and regulations now existing, or which may be necessary for regulating, protecting, or preserving fish in the waters of the Columbia River, over which the States of Oregon and Washington have concurrent jurisdiction, or any other waters within either of said States, which would affect said concurrent jurisdiction, shall be made, changed, altered, and amended in whole or in part, only with the mutual consent and approbation of both States.”

Nothing herein contained shall be construed to effect the right of the United States to regulate commerce, or the jurisdiction of the United States over navigable waters. [— *Stat. L.* —.]

[SEC. 1.] **[Expenditure of appropriations—effect of State laws and privileges.]** Appropriations herein or hereafter made for propagation of food fishes shall not be expended for hatching or planting fish or eggs in any State in which, in the judgment of the Secretary of Commerce, there are not adequate laws for the protection of the fishes, nor in any State in which the United States Commissioner of Fisheries and his duly authorized agents are not accorded full and free right to conduct fish-cultural operations, and all fishing and other operations necessary therefor, in such manner and at such times as is considered necessary and proper by the said commissioner or his agents. [— *Stat. L.* —.]

This and the three paragraphs of the text following are a part of the Sundry Civil Appropriation Act of July 1, 1918, ch. —.

[Clothing and small stores for crews of vessels.] Hereafter the Secretary of Commerce is authorized to purchase, to the extent of not to exceed \$5 000, from the appropriations for the Bureau of Fisheries, clothing and small stores for the crews of vessels, to be sold to the employees of said service and the appropriation reimbursed. [— *Stat. L.* —.]

[Officers and crews of vessels—commutation of rations.] Commutation of rations not to exceed 60 cents may be paid to officers and crews of vessels of the Bureau of Fisheries under regulations prescribed by the Secretary of Commerce. [— *Stat. L.* —.]

[Officers and crews of vessels—benefits of Public Health Service.] Officers and crews of the several vessels belonging to the Bureau of Fisheries may be admitted to the benefits of the Public Health Service without charge upon the application of their respective commanding officers. [— *Stat. L.* —.]

FOOD AND FUEL

Act of Aug. 10, 1917, ch. —, 181.

- Sec. 1. Food, Fuel, etc.—Encouraging Production, Conserving Supply and Controlling Distribution—Authority of President, 181.*
- 2. Agencies in Carrying Out Purposes of Act, 182.*
- 3. Agents or Employees of Government Not to Be Interested in Contracts, 182.*
- 4. Destruction of Necessaries—Hoarding—Waste—Monopolizing—Discrimination—Conspiracy—Prohibition, 183.*
- 5. Licensing Importation, Distribution, etc., of Necessaries—Unfair Charges—Revocation of License—Fixing Charges—Application of Act to Farmers, etc., 183.*
- 6. Hoarding Necessaries—What Constitutes Hoarding—Prohibition, 184.*
- 7. Hoarding Necessaries—Jurisdiction of Prosecution—Procedure, 184.*
- 8. Destruction of Necessaries—Penalty, 185.*
- 9. Conspiracy to Restrict Supply of Necessaries, etc., 185.*
- 10. Requisition of Foods, etc.—Compensation, 185.*
- 11. Requisition of Wheat, Flour, Meal, Beans, and Potatoes, 185.*
- 12. Requisition of Factories, Packing Houses, Oil Pipe Lines, Mines, etc., 186.*
- 13. Injurious Speculation, etc.—Prohibition, 187.*
- 14. Wheat—Fixing Price, 187.*
- 15. Distilled Spirits—Use of Food Materials Prohibited—Importation Prohibited, 188.*
- 16. Distilled Spirits—Commandeering, 189.*
- 17. Interference with Officers, etc., in Execution of Duties Under Act—Penalty, 190.*
- 18. Appropriation for Expenses, 190.*
- 19. Further Appropriation—Public Inspection of Accounts, 190.*
- 20. Employees—Exemption from Military Service, 190.*
- 21. Detailed Reports—Contents, 190.*
- 22. Invalidity of Part of Act—Effect as to Remainder, 190.*
- 23. Construction of Language of Act, 191.*
- 24. Termination of Act, 191.*
- 25. Coal and Coke—Fixing Price—Failure to Conform to Regulations—Requisitioning Plants, etc., 191.*
- 26. Hoarding or Destroying Necessaries of Life—Penalty, 194.*

An Act To provide further for the national security and defense by encouraging the production, conserving the supply, and controlling the distribution of food products and fuel.

[*Act of Aug. 10, 1917, ch. —, — Stat. L. —.*]

[**SEC. 1.**] [**Food, fuel, etc.—encouraging production, conserving supply and controlling distribution—authority of President.**] That by reason of the existence of a state of war, it is essential to the national security and defense, for the successful prosecution of the war, and for the support and maintenance of the Army and Navy, to assure an adequate supply and equitable distribution, and to facilitate the movement, of foods, feeds, fuel

including fuel oil and natural gas, and fertilizer and fertilizer ingredients, tools, utensils, implements, machinery, and equipment required for the actual production of foods, feeds, and fuel, hereafter in this Act called necessities; to prevent, locally or generally, scarcity, monopolization, hoarding, injurious speculation, manipulations, and private controls, affecting such supply, distribution, and movement; and to establish and maintain governmental control of such necessities during the war. For such purposes the instrumentalities, means, methods, powers, authorities, duties, obligations, and prohibitions hereinafter set forth are created, established, conferred, and prescribed. The President is authorized to make such regulations and to issue such orders as are essential effectively to carry out the provisions of this Act. [— *Stat. L.* —.]

SEC. 2. [Agencies in carrying out purposes of Act.] That in carrying out the purposes of this Act the President is authorized to enter into any voluntary arrangements or agreements, to create and use any agency or agencies, to accept the services of any person without compensation, to cooperate with any agency or person, to utilize any department or agency of the Government, and to coordinate their activities so as to avoid any preventable loss or duplication of effort or funds. [— *Stat. L.* —.]

SEC. 3. [Agents or employees of government not to be interested in contracts.] That no person acting either as a voluntary or paid agent or employee of the United States in any capacity, including an advisory capacity, shall solicit, induce, or attempt to induce any person or officer authorized to execute or to direct the execution of contracts on behalf of the United States to make any contract or give any order for the furnishing to the United States of work, labor, or services, or of materials, supplies, or other property of any kind or character, if such agent or employee has any pecuniary interest in such contract or order, or if he or any firm of which he is a member, or corporation, joint-stock company, or association of which he is an officer or stockholder, or in the pecuniary profits of which he is directly or indirectly interested, shall be a party thereto. Nor shall any agent or employee make, or permit any committee or other body of which he is a member to make, or participate in making, any recommendation concerning such contract or order to any council, board, or commission of the United States, or any member or subordinate thereof, without making to the best of his knowledge and belief a full and complete disclosure in writing to such council, board, commission, or subordinate of any and every pecuniary interest which he may have in such contract or order and of his interest in any firm, corporation, company, or association being a party thereto. Nor shall he participate in the awarding of such contract or giving such order. Any willful violation of any of the provisions of this section shall be punishable by a fine of not more than \$10,000, or by imprisonment of not more than five years, or both: *Provided*, That the provisions of this section shall not change, alter or repeal section forty-one of chapter three hundred and twenty-one, Thirty-fifth Statutes at Large. [— *Stat. L.* —.]

For Penal Laws, § 41 mentioned in the proviso of this section, see 1909 Supp. Fed. Stat. Ann. 416, 7 Fed. Stat. Ann. (2d ed.) 607.

SEC. 4. [Destruction of necessities — hoarding — waste — monopolizing — discrimination — conspiracy — prohibition.] That it is hereby made unlawful for any person willfully to destroy any necessities for the purpose of enhancing the price or restricting the supply thereof; knowingly to commit waste or willfully to permit preventable deterioration of any necessities in or in connection with their production, manufacture, or distribution; to hoard, as defined in section six of this Act, any necessities; to monopolize or attempt to monopolize, either locally or generally, any necessities; to engage in any discriminatory and unfair, or any deceptive or wasteful practice or device, or to make any unjust or unreasonable rate or charge, in handling or dealing in or with any necessities; to conspire, combine, agree, or arrange with any other person, (a) to limit the facilities for transporting, producing, harvesting, manufacturing, supplying, storing, or dealing in any necessities; (b) to restrict the supply of any necessities; (c) to restrict distribution of any necessities; (d) to prevent, limit, or lessen the manufacture or production of any necessities in order to enhance the price thereof, or (e) to exact excessive prices for any necessities; or to aid or abet the doing of any act made unlawful by this section. [— *Stat. L.* —.]

SEC. 5. [Licensing importation, distribution, etc., of necessities — unfair charges — revocation of license — fixing charges — application of Act to farmers, etc.] That, from time to time, whenever the President shall find it essential to license the importation, manufacture, storage, mining, or distribution of any necessities, in order to carry into effect any of the purposes of this Act, and shall publicly so announce, no person shall, after a date fixed in the announcement, engage in or carry on any such business specified in the announcement of importation, manufacture, storage, mining, or distribution of any necessities as set forth in such announcement, unless he shall secure and hold a license issued pursuant to this section. The President is authorized to issue such licenses and to prescribe regulations for the issuance of licenses and requirements for systems of accounts and auditing of accounts to be kept by licensees, submission of reports by them, with or without oath or affirmation, and the entry and inspection by the President's duly authorized agents of the places of business of licensees. Whenever the President shall find that any storage charge, commission, profit, or practice of any licensee is unjust, or unreasonable, or discriminatory and unfair, or wasteful, and shall order such licensee, within a reasonable time fixed in the order, to discontinue the same, unless such order, which shall recite the facts found, is revoked or suspended, such licensee shall, within the time prescribed in the order, discontinue such unjust, unreasonable, discriminatory and unfair storage charge, commission, profits, or practice. The President may, in lieu of any such unjust, unreasonable, discriminatory, and unfair storage charge, commission, profit, or practice, find what is a just, reasonable, nondiscriminatory and fair storage charge, commission, profit, or practice, and in any proceeding brought in any court such order of the President shall be prima facie evidence. Any person who, without a license issued pursuant to this section, or whose license shall have been revoked, knowingly engages in or carries on any business for which a license is required under this section,

or willfully fails or refuses to discontinue any unjust, unreasonable, discriminatory and unfair storage charge, commission, profit, or practice, in accordance with the requirement of an order issued under this section, or any regulation prescribed under this section, shall, upon conviction thereof, be punished by a fine not exceeding \$5,000, or by imprisonment for not more than two years, or both: *Provided*, That this section shall not apply to any farmer, gardener, cooperative association of farmers or gardeners, including live-stock farmers, or other persons with respect to the products of any farm, garden, or other land owned, leased, or cultivated by him, nor to any retailer with respect to the retail business actually conducted by him nor to any common carrier, nor shall anything in this section be construed to authorize the fixing or imposition of a duty or tax upon any article imported into or exported from the United States or any State, Territory, or the District of Columbia: *Provided further*, That for the purposes of this Act a retailer shall be deemed to be a person, copartnership, firm, corporation, or association not engaging in the wholesale business whose gross sales do not exceed \$100,000 per annum. [— *Stat. L.* —.]

SEC. 6. [Hoarding necessities — what constitutes hoarding — prohibition.] That any person who willfully hoards any necessities shall upon conviction thereof be fined not exceeding \$5,000 or be imprisoned for not more than two years, or both. Necessaries shall be deemed to be hoarded within the meaning of this Act when either (a) held, contracted for, or arranged for by any person in a quantity in excess of his reasonable requirements for use or consumption by himself and dependents for a reasonable time; (b) held, contracted for, or arranged for by any manufacturer, wholesaler, retailer, or other dealer in a quantity in excess of the reasonable requirements of his business for use or sale by him for a reasonable time, or reasonably required to furnish necessities produced in surplus quantities seasonally throughout the period of scant or no production; or (c) withheld, whether by possession or under any contract or arrangement, from the market by any person for the purpose of unreasonably increasing or diminishing the price: *Provided*, That this section shall not include or relate to transactions on any exchange, board of trade, or similar institution or place of business as described in section thirteen of this Act that may be permitted by the President under the authority conferred upon him by said section thirteen: *Provided, however*, That any accumulating or withholding by any farmer or gardener, cooperative association of farmers or gardeners, including live-stock farmers, or any other person, of the products of any farm, garden, or other land owned, leased, or cultivated by him shall not be deemed to be hoarding within the meaning of this Act. [— *Stat. L.* —.]

SEC. 7. [Hoarding necessities — jurisdiction of prosecution — procedure.] That whenever any necessities shall be hoarded as defined in section six they shall be liable to be proceeded against in any district court of the United States within the district where the same are found and seized by a process of libel for condemnation, and if such necessities shall be adjudged to be hoarded they shall be disposed of by sale in such manner as to provide the most equitable distribution thereof as the court may direct,

and the proceeds thereof, less the legal costs and charges, shall be paid to the party entitled thereto. The proceedings of such libel cases shall conform as near as may be to the proceedings in admiralty, except that either party may demand trial by jury of any issue of fact joined in any such case, and all such proceedings shall be at the suit of and in the name of the United States. It shall be the duty of the United States attorney for the proper district to institute and prosecute any such action upon presentation to him of satisfactory evidence to sustain the same. [— *Stat. L.* —.]

SEC. 8. [Destruction of necessities — penalty.] That any person who willfully destroys any necessities for the purpose of enhancing the price or restricting the supply thereof shall, upon conviction thereof, be fined not exceeding \$5,000 or imprisoned for not more than two years, or both. [— *Stat. L.* —.]

SEC. 9. [Conspiracy to restrict supply of necessities, etc.] That any person who conspires, combines, agrees, or arranges with any other person (a) to limit the facilities for transporting, producing, manufacturing, supplying, storing, or dealing in any necessities; (b) to restrict the supply of any necessities; (c) to restrict the distribution of any necessities; (d) to prevent, limit, or lessen the manufacture or production of any necessities in order to enhance the price thereof shall, upon conviction thereof be fined not exceeding \$10,000 or be imprisoned for not more than two years, or both. [— *Stat. L.* —.]

SEC. 10. [Requisition of foods, etc.— compensation.] That the President is authorized, from time to time, to requisition foods, feeds, fuels, and other supplies necessary to the support of the Army or the maintenance of the Navy, or any other public use connected with the common defense, and to requisition, or otherwise provide, storage facilities for such supplies; and he shall ascertain and pay a just compensation therefor. If the compensation so determined be not satisfactory to the person entitled to receive the same, such person shall be paid seventy-five per centum of the amount so determined by the President, and shall be entitled to sue the United States to recover such further sum as, added to said seventy-five per centum will make up such amount as will be just compensation for such necessities or storage space, and jurisdiction is hereby conferred on the United States District Courts to hear and determine all such controversies: *Provided*, That nothing in this section, or in the section that follows, shall be construed to require any natural person to furnish to the Government any necessities held by him and reasonably required for consumption or use by himself and dependents, nor shall any person, firm, corporation, or association be required to furnish to the Government any seed necessary for the seeding of land owned, leased, or cultivated by them. [— *Stat. L.* —.]

SEC. 11. [Requisition of wheat, flour, meal, beans, and potatoes.] That the President is authorized from time to time to purchase, to store, to provide storage facilities for, and to sell for cash at reasonable prices,

wheat, flour, meal, beans, and potatoes: *Provided*, That if any minimum price shall have been theretofore fixed, pursuant to the provisions of section fourteen of this Act, then the price paid for any such articles so purchased shall not be less than such minimum price. Any moneys received by the United States from or in connection with the disposal by the United States of necessities under this section may, in the discretion of the President, be used as a revolving fund for further carrying out the purposes of this section. Any balance of such moneys not used as part of such revolving fund shall be covered into the Treasury as miscellaneous receipts. [— *Stat. L.* —.]

SEC. 12. [Requisition of factories, packing houses, oil pipe lines, mines, etc.] That whenever the President shall find it necessary to secure an adequate supply of necessities for the support of the Army or the maintenance of the Navy, or for any other public use connected with the common defense, he is authorized to requisition and take over, for use or operation by the Government, any factory, packing house, oil pipe line, mine, or other plant, or any part thereof, in or through which any necessities are or may be manufactured, produced, prepared, or mined, and to operate the same. Whenever the President shall determine that the further use or operation by the Government of any such factory, mine, or plant, or part thereof, is not essential for the national security or defense, the same shall be restored to the person entitled to the possession thereof. The United States shall make just compensation, to be determined by the President, for the taking over, use, occupation, and operation by the Government of any such factory, mine, or plant, or part thereof. If the compensation so determined be unsatisfactory to the person entitled to receive the same, such person shall be paid seventy-five per centum of the amount so determined by the President, and shall be entitled to sue the United States to recover such further sum as, added to said seventy-five per centum, will make up such amount as will be just compensation, in the manner provided by section twenty-four, paragraph twenty, and section one hundred and forty-five of the Judicial Code. The President is authorized to prescribe such regulations as he may deem essential for carrying out the purposes of this section, including the operation of any such factory, mine, or plant, or part thereof, the purchase, sale, or other disposition of articles used, manufactured, produced, prepared, or mined therein, and the employment, control, and compensation of employees. Any moneys received by the United States from or in connection with the use or operation of any such factory, mine, or plant, or part thereof, may, in the discretion of the President, be used as a revolving fund for the purpose of the continued use or operation of any such factory, mine, or plant, or part thereof, and the accounts of each such factory, mine, plant, or part thereof, shall be kept separate and distinct. Any balance of such moneys not used as part of such revolving fund shall be paid into the Treasury as miscellaneous receipts. [— *Stat. L.* —.]

For Judicial Code, § 24, par. 20, mentioned in this section, see 1912 Supp. Fed. Stat. Ann. 140; 4 Fed. Stat. Ann. (2d ed.) 1059.

For Judicial Code, § 145, mentioned in this section, see 1912 Supp. Fed. Stat. Ann. 200; 5 Fed. Stat. Ann. (2d ed.) 649.

SEC. 13. [Injurious speculation, etc.— prohibition.] That whenever the President finds it essential in order to prevent undue enhancement, depression, or fluctuation of prices of, or in order to prevent injurious speculation in, or in order to prevent unjust market manipulation or unfair and misleading market quotations of the prices of necessities, hereafter in this section called evil practices, he is authorized to prescribe such regulations governing, or may either wholly or partly prohibit, operations, practices, and transactions at, on, in, or under the rules of any exchange, board of trade, or similar institution or place of business as he may find essential in order to prevent, correct, or remove such evil practices. Such regulations may require all persons coming within their provisions to keep such records and statements of account, and may require such persons to make such returns, verified under oath or otherwise, as will fully and correctly disclose all transactions at, in, or on, or under the rules of any such exchange, board of trade, or similar institution or place of business, including the making, execution, settlement, and fulfillment thereof. He may also require all persons acting in the capacity of a clearing house, clearing association, or similar institution, for the purpose of clearing, settling, or adjusting transactions at, in, or on, or under the rules of any such exchange, board of trade, or similar institution or place of business, to keep such records and to make such returns as will fully and correctly disclose all facts in their possession relating to such transactions, and he may appoint agents to conduct the investigations necessary to enforce the provisions of this section and all rules and regulations made by him in pursuance thereof, and may fix and pay the compensation of such agents. Any person who willfully violates any regulation made pursuant to this section, or who knowingly engages in any operation, practice, or transaction prohibited pursuant to this section, or who willfully aids or abets any such violation or any such prohibited operation, practice, or transaction, shall, upon conviction thereof, be punished by a fine not exceeding \$10,000 or by imprisonment for not more than four years, or both. [— *Stat. L.* —.]

SEC. 14. [Wheat — fixing price.] That whenever the President shall find that an emergency exists requiring stimulation of the production of wheat and that it is essential that the producers of wheat, produced within the United States, shall have the benefits of the guaranty provided for in this section, he is authorized, from time to time, seasonably and as far in advance of seeding time as practicable, to determine and fix and to give public notice of what, under specified conditions, is a reasonable guaranteed price for wheat, in order to assure such producers, a reasonable profit. The President shall thereupon fix such guaranteed price for each of the official grain standards for wheat as established under the United States grain standards Act, approved August eleventh, nineteen hundred and sixteen. The President shall from time to time establish and promulgate such regulations as he shall deem wise in connection with such guaranteed prices, and in particular governing conditions of delivery and payment, and differences in price for the several standard grades in the principal primary markets of the United States, adopting number one northern spring or its equivalent at the principal interior primary markets as the basis. Thereupon, the Government of the United States hereby guarantees every pro-

ducer of wheat produced within the United States, that, upon compliance by him with the regulations prescribed, he shall receive for any wheat produced in reliance upon this guarantee within the period, not exceeding eighteen months, prescribed in the notice, a price not less than the guaranteed price therefor as fixed pursuant to this section. In such regulations the President shall prescribe the terms and conditions upon which any such producer shall be entitled to the benefits of such guaranty. The guaranteed prices for the several standard grades of wheat for the crop of nineteen hundred and eighteen, shall be based upon number one northern spring or its equivalent at not less than \$2 per bushel at the principal interior primary markets. This guaranty shall not be dependent upon the action of the President under the first part of this section, but is hereby made absolute and shall be binding until May first, nineteen hundred and nineteen. When the President finds that the importation into the United States of any wheat produced outside of the United States materially enhances or is likely materially to enhance the liabilities of the United States under guaranties of prices therefor made pursuant to this section, and ascertains what rate of duty, added to the then existing rate of duty on wheat and to the value of wheat at the time of importation, would be sufficient to bring the price thereof at which imported up to the price fixed therefor pursuant to the foregoing provisions of this section, he shall proclaim such facts, and thereafter there shall be levied, collected, and paid upon wheat imported in addition to the then existing rate of duty, the rate of duty so ascertained; but in no case shall any such rate of duty be fixed at an amount which will effect a reduction of the rate of duty, upon wheat under any then existing tariff law of the United States. For the purpose of making any guaranteed price effective under this section, or whenever he deems it essential in order to protect the Government of the United States against material enhancement of its liabilities arising out of any guaranty under this section, the President is authorized also, in his discretion, to purchase any wheat for which a guaranteed price shall be fixed under this section, and to hold, transport, or store it, or to sell, dispose of, and deliver the same to any citizen of the United States or to any Government engaged in war with any country with which the Government of the United States is or may be at war or to use the same as supplies for any department or agency of the Government of the United States. Any moneys received by the United States from or in connection with the sale or disposal of wheat under this section may, in the discretion of the President, be used as a revolving fund for further carrying out the purposes of this section. Any balance of such moneys not used as part of such revolving fund shall be covered into the Treasury as miscellaneous receipts. [— *Stat. L.* —.]

For the United States Grain Standards Act of Aug. 11, 1916, ch. 313, mentioned in this section, see *AGRICULTURE, ante*, p. 3.

SEC. 15. [Distilled spirits—use of food materials prohibited—importation prohibited.] That from and after thirty days from the date of the approval of this Act no foods, fruits, food materials, or feeds shall be used in the production of distilled spirits for beverage purposes: *Provided*, That under such rules, regulations, and bonds as the President may prescribe, such materials may be used in the production of distilled spirits exclusively for other than beverage purposes, or for the fortification of pure

sweet wines as defined by the Act entitled "An Act to increase the revenue, and for other purposes," approved September eighth, nineteen hundred and sixteen. Nor shall there be imported into the United States any distilled spirits. Whenever the President shall find that limitation, regulation, or prohibition of the use of foods, fruits, food materials, or feeds in the production of malt or vinous liquors for beverage purposes, or that reduction of the alcoholic content of any such malt or vinous liquor, is essential in order to assure an adequate and continuous supply of food, or that the national security and defense will be subserved thereby, he is authorized, from time to time, to prescribe and give public notice of the extent of the limitation, regulation, prohibition, or reduction so necessitated. Whenever such notice shall have been given and shall remain unrevoked no person shall, after a reasonable time prescribed in such notice, use any foods, fruits, food materials, or feeds in the production of malt or vinous liquors, or import any such liquors except under license issued by the President and in compliance with the rules and regulations determined by him governing the production and importation of such liquors and the alcoholic content thereof. Any person who willfully violates the provisions of this section, or who shall use any foods, fruits, food materials, or feeds in the production of malt or vinous liquors, or who shall import any such liquors, without first obtaining a license so to do when a license is required under this section, or who shall violate any rule or regulation made under this section, shall be punished by a fine not exceeding \$5,000, or by imprisonment for not more than two years, or both: *Provided further*, That nothing in this section shall be construed to authorize the licensing of the manufacture of vinous or malt liquors in any State, Territory, or the District of Columbia, or any civil subdivision thereof, where the manufacture of such vinous or malt liquor is prohibited. [— *Stat. L.* —.]

For the Act of Sept. 8, 1916, ch. 463, mentioned in this section, see *INTERNAL REVENUE*, *post*, p. 270.

SEC. 16. [Distilled spirits — commandeering.] That the President is authorized and directed to commandeer any or all distilled spirits in bond or in stock at the date of the approval of this Act for redistillation, in so far as such redistillation may be necessary to meet the requirements of the Government in the manufacture of munitions and other military and hospital supplies, or in so far as such redistillation would dispense with the necessity of utilizing products and materials suitable for foods and feeds in the future manufacture of distilled spirits for the purposes herein enumerated. The President shall determine and pay a just compensation for the distilled spirits so commandeered; and if the compensation so determined be not satisfactory to the person entitled to receive the same, such person shall be paid seventy-five per centum of the amount so determined by the President and shall be entitled to sue the United States to recover such further sum as, added to said seventy-five per centum, will make up such amount as will be just compensation for such spirits, in the manner provided by section twenty-four, paragraph twenty, and section one hundred and forty-five of the Judicial Code. [— *Stat. L.* —.]

For Judicial Code, § 24, par. 20, mentioned in this section, see 1912 Supp. Fed. Stat. Ann. 140; 4 Fed. Stat. Ann. (2d ed.) 1059.

For Judicial Code, § 145, mentioned in this section, see 1912 Supp. Fed. Stat. Ann. 200; 5 Fed. Stat. Ann. (2d ed.) 649.

SEC. 17. [Interference with officers, etc., in execution of duties under Act — penalty.] That every person who willfully assaults, resists, impedes, or interferes with any officer, employee, or agent of the United States in the execution of any duty authorized to be performed by or pursuant to this Act shall upon conviction thereof be fined not exceeding \$1,000 or be imprisoned for not more than one year, or both. [— *Stat. L.* —.]

SEC. 18. [Appropriation for expenses.] That the sum of \$2,500,000 is hereby appropriated, out of any moneys in the Treasury not otherwise appropriated, to be available until June thirtieth, nineteen hundred and eighteen, for the payment of such rent, the expense, including postage, of such printing and publications, the purchase of such material and equipment, and the employment of such persons and means, in the city of Washington and elsewhere, as the President may deem essential. [— *Stat. L.* —.]

SEC. 19. [Further appropriation — public inspection of accounts.] That for the purposes of this Act the sum of \$150,000,000 is hereby appropriated, out of any moneys in the Treasury not otherwise appropriated, to be available during the time this Act is in effect: *Provided*, That no part of this appropriation shall be expended for the purposes described in the preceding section: *Provided further*, That itemized statements covering all purchases and disbursements under this and the preceding section shall be filed with the Secretary of the Senate and the Clerk of the House of Representatives on or before the twenty-fifth day of each month after the taking effect of this Act, covering the business of the preceding month, and said statements shall be subject to public inspection. [— *Stat. L.* —.]

SEC. 20. [Employees — exemption from military service.] That the employment of any person under the provisions of this Act shall not exempt any such person from military service under the provisions of the selective draft law approved May eighteenth, nineteen hundred and seventeen. [— *Stat. L.* —.]

For the selective draft law of May 18, 1917, mentioned in this section, see WAR DEPARTMENT AND MILITARY ESTABLISHMENT, *post*; 9 Fed. Stat. Ann. (2d ed.) 1136.

SEC. 21. [Detailed reports — contents.] The President shall cause a detailed report to be made to the Congress on the first day of January each year of all proceedings had under this Act during the year preceding. Such report shall, in addition to other matters, contain an account of all persons appointed or employed, the salary or compensation paid or allowed each, the aggregate amount of the different kinds of property purchased or requisitioned, the use and disposition made of such property, and a statement of all receipts, payments, and expenditures, together with a statement showing the general character, and estimated value of all property then on hand, and the aggregate amount and character of all claims against the United States growing out of this Act. [— *Stat. L.* —.]

SEC. 22. [Invalidity of part of Act — effect as to remainder.] That if any clause, sentence, paragraph, or part of this Act shall for any reason be

adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, or part thereof, directly involved in the controversy in which such judgment shall have been rendered. [— *Stat. L.* —.]

SEC. 23. [Construction of language of Act.] That words used in this Act shall be construed to import the plural or the singular, as the case demands. The word "person," wherever used in this Act, shall include individuals, partnerships, associations, and corporations. When construing and enforcing the provisions of this Act, the act, omission, or failure of any official, agent, or other person acting for or employed by any partnership, association, or corporation within the scope of his employment or office shall, in every case, also be deemed the act, omissions, or failure of such partnership, association, or corporation as well as that of the person. [— *Stat. L.* —.]

SEC. 24. [Termination of Act.] That the provisions of this Act shall cease to be in effect when the existing state of war between the United States and Germany shall have terminated, and the fact and date of such termination shall be ascertained and proclaimed by the President; but the termination of this Act shall not affect any act done, or any right or obligation accruing or accrued, or any suit or proceeding had or commenced in any civil case before the said termination pursuant to this Act; but all rights and liabilities under this Act arising before its termination shall continue and may be enforced in the same manner as if the Act had not terminated. Any offense committed and all penalties, forfeitures, or liabilities incurred prior to such termination may be prosecuted or punished in the same manner and with the same effect as if this Act had not been terminated. [— *Stat. L.* —.]

SEC. 25. [Coal and coke — fixing price — failure to conform to regulations — requisitioning plants, etc.] That the President of the United States shall be, and he is hereby, authorized and empowered, whenever and wherever in his judgment necessary for the efficient prosecution of the war, to fix the price of coal and coke, wherever and whenever sold, either by producer or dealer, to establish rules for the regulation of and to regulate the method of production, sale, shipment, distribution, apportionment, or storage thereof among dealers and consumers, domestic or foreign; said authority and power may be exercised by him in each case through the agency of the Federal Trade Commission during the war or for such part of said time as in his judgment may be necessary.

That if, in the opinion of the President, any such producer or dealer fails or neglects to conform to such prices or regulations, or to conduct his business efficiently under the regulations and control of the President as aforesaid, or conducts it in a manner prejudicial to the public interest, then the President is hereby authorized and empowered in every such case to requisition and take over the plant, business, and all appurtenances thereof belonging to such producer or dealer as a going concern, and to operate or cause the same to be operated in such manner and through such agency as

he may direct during the period of the war or for such part of said time as in his judgment may be necessary.

That any producer or dealer whose plant, business, and appurtenances shall have been requisitioned or taken over by the President shall be paid a just compensation for the use thereof during the period that the same may be requisitioned or taken over as aforesaid, which compensation the President shall fix or cause to be fixed by the Federal Trade Commission.

That if the prices so fixed, or if, in the case of the taking over or requisitioning of the mines or business of any such producer or dealer the compensation therefor as determined by the provisions of this Act be not satisfactory to the person or persons entitled to receive the same, such person shall be paid seventy-five per centum of the amount so determined, and shall be entitled to sue the United States to recover such further sum as, added to said seventy-five per centum, will make up such amount as will be just compensation in the manner provided by section twenty-four, paragraph twenty, and section one hundred and forty-five of the Judicial Code.

While operating or causing to be operated any such plants or business, the President is authorized to prescribe such regulations as he may deem essential for the employment, control, and compensation of the employees necessary to conduct the same.

Or if the President of the United States shall be of the opinion that he can thereby better provide for the common defense, and whenever, in his judgment, it shall be necessary for the efficient prosecution of the war, then he is hereby authorized and empowered to require any or all producers of coal and coke, either in any special area or in any special coal fields, or in the entire United States, to sell their products only to the United States through an agency to be designated by the President, such agency to regulate the resale of such coal and coke, and the prices thereof, and to establish rules for the regulation of and to regulate the methods of production, shipment, distribution, apportionment, or storage thereof among dealers and consumers, domestic or foreign, and to make payment of the purchase price thereof to the producers thereof, or to the person or persons legally entitled to said payment

That within fifteen days after notice from the agency so designated to any producer of coal and coke that his, or its, output is to be so purchased by the United States as hereinbefore described, such producer shall cease shipments of said product upon his own account and shall transmit to such agency all orders received and unfilled or partially unfilled, showing the exact extent to which shipments have been made thereon, and thereafter all shipments shall be made only on authority of the agency designated by the President, and thereafter no such producer shall sell any of said products except to the United States through such agency, and the said agency alone is hereby authorized and empowered to purchase during the continuance of the requirement the output of such producers.

That the prices to be paid for such products so purchased shall be based upon a fair and just profit over and above the cost of production, including proper maintenance and depletion charges, the reasonableness of such profits and cost of production to be determined by the Federal Trade Commission, and if the prices fixed by the said commission of any such product purchased by the United States as hereinbefore described be unsatisfactory

to the person or persons entitled to the same, such person or persons shall be paid seventy-five per centum of the amount so determined, and shall be entitled to sue the United States to recover such further sum as, added to said seventy-five per centum, will make up such amount as will be just compensation in the manner provided by section twenty-four, paragraph twenty, and section one hundred and forty-five of the Judicial Code.

All such products so sold to the United States shall be sold by the United States at such uniform prices, quality considered, as may be practicable and as may be determined by said agency to be just and fair.

Any moneys received by the United States for the sale of any such coal and coke may, in the discretion of the President, be used as a revolving fund for further carrying out the purposes of this section. Any moneys not so used shall be covered into the Treasury as miscellaneous receipts.

That when directed by the President, the Federal Trade Commission is hereby required to proceed to make full inquiry, giving such notice as it may deem practicable, into the cost of producing under reasonably efficient management at the various places of production the following commodities, to wit, coal and coke.

The books, correspondence, records, and papers in any way referring to transactions of any kind relating to the mining, production, sale, or distribution of all mine operators or other persons whose coal and coke have or may become subject to this section, and the books, correspondence, records, and papers of any person applying for the purchase of coal and coke from the United States shall at all times be subject to inspection by the said agency, and such person or persons shall promptly furnish said agency any data or information relating to the business of such person or persons which said agency may call for, and said agency is hereby authorized to procure the information in reference to the business of such coal-mine operators and producers of coke and customers therefor in the manner provided for in sections six and nine of the Act of Congress approved September twenty-sixth, nineteen hundred and fourteen, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and said agency is hereby authorized and empowered to exercise all the powers granted to the Federal Trade Commission by said Act for the carrying out of the purposes of this section.

Having completed its inquiry respecting any commodity in any locality, it shall, if the President has decided to fix the prices at which any such commodity shall be sold by producers and dealers generally, fix and publish maximum prices for both producers of and dealers in any such commodity, which maximum prices shall be observed by all producers and dealers until further action thereon is taken by the commission.

In fixing maximum prices for producers the commission shall allow the cost of production, including the expense of operation, maintenance, depreciation, and depletion, and shall add thereto a just and reasonable profit.

In fixing such prices for dealers, the commission shall allow the cost to the dealer and shall add thereto a just and reasonable sum for his profit in the transaction.

The maximum prices so fixed and published shall not be construed as invalidating any contract in which prices are fixed, made in good faith,

prior to the establishment and publication of maximum prices by the commission.

Whoever shall, with knowledge that the prices of any such commodity have been fixed as herein provided, ask, demand, or receive a higher price, or whoever shall, with knowledge that the regulations have been prescribed as herein provided, violate or refuse to conform to any of the same, shall, upon conviction, be punished by fine of not more than \$5,000, or by imprisonment for not more than two years, or both. Each independent transaction shall constitute a separate offense.

Nothing in this section shall be construed as restricting or modifying in any manner the right the Government of the United States may have in its own behalf or in behalf of any other Government at war with Germany to purchase, requisition, or take over any such commodities for the equipment, maintenance, or support of armed forces at any price or upon any terms that may be agreed upon or otherwise lawfully determined. [— *Stat. L.* —.]

For the Act of Sept. 26, 1914, ch. 311, mentioned in this section, see 1916 Supp. Fed. Stat. Ann. 112; 4 Fed. Stat. Ann. (2d ed.) 575.

SEC. 26. [Hoarding or destroying necessities of life — penalty.] That any person carrying on or employed in commerce among the several States, or with foreign nations, or with or in the Territories or other possessions of the United States in any article suitable for human food, fuel, or other necessities of life, who, either in his individual capacity or as an officer, agent, or employee of a corporation or member of a partnership carrying on or employed in such trade, shall store, acquire, or hold, or who shall destroy or make away with any such article for the purpose of limiting the supply thereof to the public or affecting the market price thereof in such commerce, whether temporarily or otherwise, shall be deemed guilty of a felony and, upon conviction thereof, shall be punished by a fine of not more than \$5,000 or by imprisonment for not more than two years, or both: *Provided*, That any storing or holding by any farmer, gardener, or other person of the products of any farm, garden, or other land cultivated by him shall not be deemed to be a storing or holding within the meaning of this Act: *Provided further*, That farmers and fruit growers, cooperative and other exchanges, or societies of a similar character shall not be included within the provisions of this section: *Provided further*, That this section shall not be construed to prohibit the holding or accumulating of any such article by any such person in a quantity not in excess of the reasonable requirements of his business for a reasonable time or in a quantity reasonably required to furnish said articles produced in surplus quantities seasonally throughout the period of scant or no production. Nothing contained in this section shall be construed to repeal the Act entitled “An Act to protect trade and commerce against unlawful restraints and monopolies,” approved July second, eighteen hundred and ninety, commonly known as the Sherman Antitrust Act. [— *Stat. L.* —.]

For the Sherman Antitrust Act of July 2, 1890, ch. 647, mentioned in this section, see 7 Fed. Stat. Ann. 336; 9 Fed. Stat. Ann. (2d ed.) 644.

FOREIGN CORPORATION TAX

See INTERNAL REVENUE

FOREIGN RELATIONS

Act of Aug. 29, 1916, ch. 417, 195.

*Settlement of International Disputes — Policy of United States
Declared — Conference of Powers, 195.*

CROSS-REFERENCES

See *CRIMINAL LAW; PENAL LAWS.*

[Settlement of international disputes — policy of United States declared — conference of powers.] * * * It is hereby declared to be the policy of the United States to adjust and settle its international disputes through mediation or arbitration, to the end that war may be honorably avoided. It looks with apprehension and disfavor upon a general increase of armament throughout the world, but it realizes that no single nation can disarm, and that without a common agreement upon the subject every considerable power must maintain a relative standing in military strength.

In view of the premises, the President is authorized and requested to invite, at an appropriate time, not later than the close of the war in Europe, all the great Governments of the world to send representatives to a conference which shall be charged with the duty of formulating a plan for a court of arbitration or other tribunal, to which disputed questions between nations shall be referred for adjudication and peaceful settlement, and to consider the question of disarmament and submit their recommendation to their respective Governments for approval. The President is hereby authorized to appoint nine citizens of the United States, who, in his judgment, shall be qualified for the mission by eminence in the law and by devotion to the cause of peace, to be representatives of the United States in such a conference. The President shall fix the compensation of said representatives, and such secretaries and other employees as may be needed. Two hundred thousand dollars, or so much thereof as may be necessary, is hereby appropriated and set aside and placed at the disposal of the President to carry into effect the provisions of this paragraph.

If at any time before the construction authorized by this Act shall have been contracted for there shall have been established, with the cooperation of the United States of America, an international tribunal or tribunals competent to secure peaceful determinations of all international disputes, and which shall render unnecessary the maintenance of competitive armaments, then and in that case such naval expenditures as may be inconsistent with the engagements made in the establishment of such tribunal or tribunals may be suspended, when so ordered by the President of the United States. [39 Stat. L. 618.]

This is from the Naval Appropriation Act of August 29, 1916, ch. 417,

FOREST RESERVES

See **TIMBER LANDS AND FOREST RESERVES**

FORGERY

See **CRIMINAL LAW; NAVY; PASSPORTS**

GAME ANIMALS AND BIRDS

Act of July 3, 1918, ch. — ("Migratory Bird Treaty Act"), 196.

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2. Sale, Purchase, Transportation, etc., of Migratory Birds, Eggs, etc., 196.

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An Act To give effect to the convention between the United States and Great Britain for the protection of migratory birds concluded at Washington, August sixteenth, nineteen hundred and sixteen, and for other purposes.

[*Act of July 3, 1918, ch. —, — Stat. L. —.*]

[**SEC. 1.**] [**Title of Act.**] That this Act shall be known by the short title of the "**Migratory Bird Treaty Act.**" [*— Stat. L. —.*]

SEC. 2. [**Sale, purchase, transportation, etc., of migratory birds, eggs, etc.**] That unless and except as permitted by regulations made as hereinafter provided, it shall be unlawful to hunt, take, capture, kill, attempt to take, capture or kill, possess, offer for sale, sell, offer to purchase, purchase, deliver for shipment, ship, cause to be shipped, deliver for transportation, transport, cause to be transported, carry or cause to be carried by any means whatever, receive for shipment, transportation or carriage, or export, at any time or in any manner, any migratory bird, included in the terms of

the convention¹ between the United States and Great Britain for the protection of migratory birds concluded August sixteenth, nineteen hundred and sixteen, or any part, nest, or egg of any such bird. [— *Stat. L.* —]

1 CONVENTION

WHEREAS, Many species of birds in the course of their annual migration traverse certain parts of the United States and the Dominion of Canada; and

WHEREAS, Many of these species are of great value as a source of food or in destroying insects which are injurious to forests and forage plants on the public domain, as well as to agricultural crops, in both the United States and Canada, but are nevertheless in danger of extermination through lack of adequate protection during the nesting season or while on their way to and from their breeding grounds;

The United States of America and His Majesty the King of the United Kingdom of Great Britain and Ireland and of the British dominions beyond the seas, Emperor of India, being desirous of saving from indiscriminate slaughter and of insuring the preservation of such migratory birds as are either useful to man or are harmless, have resolved to adopt some uniform system of protection which shall effectively accomplish such objects, and to the end of concluding a convention for this purpose have appointed as their respective plenipotentiaries:

The President of the United States of America, Robert Lansing, Secretary of State of the United States; and

His Britannic Majesty, the Right Honorable Sir Cecil Arthur Spring Rice, G. C. V. O., K. C. M. G., etc., His Majesty's ambassador extraordinary and plenipotentiary at Washington;

Who, after having communicated to each other their respective full powers, which were found to be in due and proper form, have agreed to and adopted the following articles:

ARTICLE I

The high contracting powers declare that the migratory birds included in the terms of this convention shall be as follows:

1. Migratory game birds:

- (a) Anatidæ or waterfowl, including brant, wild ducks, geese, and swans.
- (b) Gruidæ or cranes, including little brown, sandhill, and whooping cranes.
- (c) Rallidæ or rails, including coots, gallinules, and sora and other rails.
- (d) Limicolæ or shore birds, including avocets, curlew, dowitchers, godwits, knots, oyster catchers, phalaropes, plovers, sandpipers, snipe, tilts, surf birds, turnstones, willet, woodcock, and yellowlegs.

(e) Columbidsæ or pigeons, including doves and wild pigeons.

2. Migratory insectivorous birds: Bobolinks, catbirds, chickadees, cuckoos, flickers, flycatchers, grosbeaks, humming birds, kinglets, martins, meadowlarks, nighthawks or bull bats, nut-hatches, orioles, robins, shrikes, swallows, swifts, tanagers, titmice, thrushes, vireos, warblers, wax-wings, whippoorwills, woodpeckers, and wrens, and all other perching birds which feed entirely or chiefly on insects.

3. Other migratory nongame birds: Auks, auklets, bitterns, fulmars, gannets, grebes, guillemots, gulls, herons, jaegers, loons, murrees, petrels, puffins, shearwaters, and terns.

ARTICLE II

The high contracting powers agree that, as an effective means of preserving migratory birds, there shall be established the following close seasons during which no hunting shall be done except for scientific or propagating purposes under permits issued by proper authorities.

1. The close season on migratory game birds shall be between March 10 and September 1, except that the close season on the Limicolæ or shore birds in the maritime Provinces of Canada and in those States of the United States bordering on the Atlantic Ocean which are situated wholly or in part north of Chesapeake Bay, shall be between February 1 and August 15, and that Indians may take at any time scoters for food but not for sale. The season for hunting shall be further restricted to such period not exceeding three and one-half months, as the high contracting powers may severally deem appropriate and define by law or regulation.

2. The close season on migratory insectivorous birds shall continue throughout the year.

3. The close season on other migratory nongame birds shall continue throughout the year, except that Eskimos and Indians may take at any season auks, auklets, guillemots, murrees and puffins, and their eggs, for food and their skins for clothing, but the birds and eggs so taken shall not be sold or offered for sale.

ARTICLE III

The high contracting powers agree that during the period of 10 years next following the going into effect of this convention, there shall be a continuous close season on the following migratory game birds, to wit:

SEC. 3. [Regulations by Secretary of Agriculture.] That subject to the provisions and in order to carry out the purposes of the convention, the Secretary of Agriculture is authorized and directed, from time to time,

Band-tailed pigeons, little brown, sandhill and whooping cranes, swans, curlew and all shore birds (except the black-breasted and golden plover, Wilson or jack snipe, woodcock, and the greater and lesser yellowlegs); provided that during such 10 years the close seasons on cranes, swans, and curlew in the Province of British Columbia shall be made by the proper authorities of that Province within the general dates and limitations elsewhere prescribed in this convention for the respective groups to which these birds belong.

ARTICLE IV

The high contracting powers agree that special protection shall be given the wood duck and the eider duck either (1) by a close season extending over a period of at least five years, or (2) by the establishment of refuges; or (3) by such other regulations as may be deemed appropriate.

ARTICLE V

The taking of nests or eggs of migratory game or insectivorous or nongame birds shall be prohibited, except for scientific or propagating purposes under such laws or regulations as the high contracting powers may severally deem appropriate.

ARTICLE VI

The high contracting powers agree that the shipment or export of migratory birds or their eggs from any State or Province, during the continuance of the close season in such State or Province, shall be prohibited except for scientific or propagating purposes, and the international traffic in any birds or eggs at such time captured, killed, taken, or shipped at any time contrary to the laws of the State or Province in which the same were captured, killed, taken, or shipped shall be likewise prohibited. Every package containing migratory birds or any parts thereof, or any eggs of migratory birds transported, or offered for transportation, from the Dominion of Canada into the United States or from the United States into the Dominion of Canada, shall have the name and address of the shipper and an accurate statement of the contents clearly marked on the outside of such package.

ARTICLE VII

Permits to kill any of the above-named birds which, under extraordinary conditions, may become seriously injurious to the agricultural or other interests in any particular community, may be issued by the proper authorities of the high contracting powers under suitable regulations prescribed therefor by them respectively, but such permits shall lapse, or may be cancelled, at any time when, in the opinion of said authorities, the particular exigency has passed, and no birds killed under this article shall be shipped, sold, or offered for sale.

ARTICLE VIII

The high contracting powers agree themselves to take, or propose to their respective appropriate law-making bodies, the necessary measures, for insuring the execution of the present convention.

ARTICLE IX

The present convention shall be ratified by the President of the United States of America, by and with the advice and consent of the Senate thereof, and by His Britannic Majesty. The ratifications shall be exchanged at Washington as soon as possible and the convention shall take effect on the date of the exchange of the ratifications. It shall remain in force for fifteen years, and in the event of neither of the high contracting powers having given notification, twelve months before the expiration of said period of fifteen years, of its intention of terminating its operation, the convention shall continue to remain in force for one year and so on from year to year.

In faith whereof, the respective plenipotentiaries have signed the present convention in duplicate and have hereunto affixed their seals.

Done at Washington this sixteenth day of August, one thousand nine hundred and sixteen.

[SEAL.]

[SEAL.]

ROBERT LANSING.
CECIL SPRING RICE.

having due regard to the zones of temperature and to the distribution, abundance, economic value, breeding habits, and times and lines of migratory flight of such birds, to determine when, to what extent, if at all, and by what means, it is compatible with the terms of the convention to allow hunting, taking, capture, killing, possession, sale, purchase, shipment, transportation, carriage, or export of any such bird, or any part, nest, or egg thereof, and to adopt suitable regulations permitting and governing the same, in accordance with such determinations, which regulations shall become effective when approved by the President. [— *Stat. L.* —.]

SEC. 4. [Interstate transportation or importation of protected birds.] That it shall be unlawful to ship, transport, or carry, by any means whatever, from one State, Territory, or District to or through another State, Territory, or District, or to or through a foreign country, any bird, or any part, nest, or egg thereof, captured, killed, taken, shipped, transported, or carried at any time contrary to the laws of the State, Territory, or District in which it was captured, killed, or taken, or from which it was shipped, transported, or carried. It shall be unlawful to import any bird, or any part, nest, or egg thereof, captured, killed, taken, shipped, transported, or carried contrary to the laws of any Province of the Dominion of Canada in which the same was captured, killed, or taken, or from which it was shipped, transported, or carried. [— *Stat. L.* —.]

SEC. 5. [Arrest of offenders — execution of process — forfeiture.] That any employee of the Department of Agriculture authorized by the Secretary of Agriculture to enforce the provisions of this Act shall have power, without warrant, to arrest any person committing a violation of this Act in his presence or view and to take such person immediately for examination or trial before an officer or court of competent jurisdiction; shall have power to execute any warrant or other process issued by an officer or court of competent jurisdiction for the enforcement of the provisions of this Act; and shall have authority, with a search warrant, to search any place. The several judges of the courts established under the laws of the United States, and United States commissioners may, within their respective jurisdictions, upon proper oath or affirmation showing probable cause, issue warrants in all such cases. All birds, or parts, nests, or eggs thereof, captured, killed, taken, shipped, transported, carried, or possessed contrary to the provisions of this Act or of any regulations made pursuant thereto shall, when found, be seized by any such employee, or by any marshal or deputy marshal, and, upon conviction of the offender or upon judgment of a court of the United States that the same were captured, killed, taken, shipped, transported, carried, or possessed contrary to the provisions of this Act or of any regulation made pursuant thereto, shall be forfeited to the United States and disposed of as directly by the court having jurisdiction. [— *Stat. L.* —.]

SEC. 6. [Violations of Act — penalty.] That any person, association, partnership, or corporation who shall violate any of the provisions of said convention or of this Act, or who shall violate or fail to comply with any regulation made pursuant to this Act, shall be deemed guilty of a mis-

demeanor and upon conviction thereof shall be fined not more than \$500 or be imprisoned not more than six months, or both. [— *Stat. L.* —.]

SEC. 7. [State laws and regulations.] That nothing in this Act shall be construed to prevent the several States and Territories from making or enforcing laws or regulations not inconsistent with the provisions of said convention or of this Act, or from making or enforcing laws or regulations which shall give further protection to migratory birds, their nests, and eggs, if such laws or regulations do not extend the open seasons for such birds beyond the dates approved by the President in accordance with section three of this Act. [— *Stat. L.* —.]

SEC. 8. [Birds, etc., for scientific purposes — marking packages.] That until the adoption and approval, pursuant to section three of this Act, of regulations dealing with migratory birds and their nests and eggs, such migratory birds and their nests and eggs as are intended and used exclusively for scientific or propagating purposes may be taken, captured, killed, possessed, sold, purchased, shipped, and transported for such scientific or propagating purposes if and to the extent not in conflict with the laws of the State, Territory, or District in which they are taken, captured, killed, possessed, sold, or purchased, or in or from which they are shipped or transported if the packages containing the dead bodies or the nests or eggs of such birds when shipped and transported shall be marked on the outside thereof so as accurately and clearly to show the name and address of the shipper and the contents of the package. [— *Stat. L.* —.]

SEC. 9. [Appropriations.] That the unexpended balances of any sums appropriated by the agricultural appropriation Acts for the fiscal years nineteen hundred and seventeen and nineteen hundred and eighteen, for enforcing the provisions of the Act approved March fourth, nineteen hundred and thirteen, relating to the protection of migratory game and insectivorous birds, are hereby reappropriated and made available until expended for the expenses of carrying into effect the provisions of this Act and regulations made pursuant thereto, including the payment of such rent, and the employment of such persons and means, as the Secretary of Agriculture may deem necessary, in the District of Columbia and elsewhere, cooperation with local authorities in the protection of migratory birds, and necessary investigations connected therewith: *Provided*, That no person who is subject to the draft for service in the Army or Navy shall be exempted or excused from such service by reason of his employment under this Act. [— *Stat. L.* —.]

For the Act of March 4, 1913, ch. 145, § 1, mentioned in the text, see 1914 Supp. Fed. Stat. Ann. 148; 3 Fed. Stat. Ann. (2d ed.) 414.

SEC. 10. [Invalidity of part of Act — effect.] That if any clause, sentence, paragraph, or part of this Act shall, for any reason, be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, or part thereof

directly involved in the controversy in which such judgment shall have been rendered. [— *Stat. L.* —.]

SEC. 11. [Repeal of inconsistent Acts.] That all Acts or parts of Acts inconsistent with the provisions of this Act are hereby repealed. [— *Stat. L.* —.]

SEC. 12. [Increasing food supply.] Nothing in this Act shall be construed to prevent the breeding of migratory game birds on farms and preserves and the sale of birds so bred under proper regulation for the purpose of increasing the food supply. [— *Stat. L.* —.]

SEC. 13. [Effect.] That this Act shall become effective immediately upon its passage and approval. [— *Stat. L.* —]

GEODETIC SURVEY

See COAST AND GEODETIC SURVEY

GEOLOGICAL SURVEY

Act of June 12, 1917, ch. —, 201.

Sec. 1. Supplies — Services — Open Market, 201.

[SEC. 1.] [Supplies — services — open market.] * * * That hereafter the purchase of supplies or the procurement of services outside the District of Columbia may be made in open market in the manner common among business men when the aggregate amount of the purchase does not exceed \$50. [— *Stat. L.* —.]

This is from the Sundry Civil Appropriation Act of June 12, 1917, ch. —.

GLACIER NATIONAL PARK

See PUBLIC PARKS

GRAIN STANDARDS ACT

See AGRICULTURE

HAWAIIAN ISLANDS

Act of May 23, 1918, ch. —, 202.

*Sec. 1. Intoxicating Liquors — Sale, Importation, etc., Prohibited —
Penalty — Determination by Voters, 202.*

2. Petition by Voters — Filing, 202.

Act of June 18, 1918, ch. —, 203.

*Sec. 1. Female Citizens — Right to Vote — Determination by Legislature,
203.*

2. Determination by Voters of Territory, 203.

3. Repeal of Conflicting Provisions, 203.

4. Effect — Application, 203.

An Act To prohibit the sale, manufacture, and importation of intoxicating liquors in the Territory of Hawaii during the period of the war, except as hereinafter provided.

[*Act of May 23, 1918, ch. —, — Stat. L. —.*]

[SEC. 1.] [**Intoxicating liquors — sale, importation, etc., prohibited — penalty — determination by voters.**] That, ninety days after the passage of this Act, during the period of the war and thereafter, except as herein provided, it shall be unlawful in the Territory of Hawaii to sell, give away, manufacture, transport, import, or export intoxicating liquors, except for mechanical, scientific, sacramental, or medicinal purposes, for which purposes the sale, gift, transport, import, and export of the same shall be under such rules and regulations as the Governor of the Territory may prescribe, and any person violating the provisions hereof shall be fined in a sum not exceeding \$500 or imprisoned for a period of not longer than one year, or both: *Provided*, That at any general election of the Territory of Hawaii, held within two years after the conclusion of peace, the repeal of this Act may, upon petition of not less than twenty per centum of the qualified electors of said Territory at the last preceding general election, be submitted to a vote of the qualified electors of said territory, and if a majority of all the qualified electors thereof voting upon such questions shall vote to repeal this Act, it shall therefore not be in force and effect, otherwise it shall be in full force and effect. [*— Stat. L. —.*]

SEC. 2. [**Petition by voters — filing.**] That the said petition shall be addressed to and filed with the Secretary of the Territory at least two months before the election at which the question is to be voted upon, and the person obtaining any signature to such petition shall make affidavit that he witnessed the signing of the same and believes the address of each petitioner affixed to his name is the true address of such petitioner. Such election shall be conducted under the laws of the Territory provided for general elections. [*— Stat. L. —.*]

An Act Granting to the Legislature of the Territory of Hawaii additional powers relative to elections and qualification of electors.

[*Act of June 13, 1918, ch. —, — Stat. L. —.*]

[SEC. 1.] [**Female citizens — right to vote — determination by Legislature.**] That the Legislature of the Territory of Hawaii be, and it is hereby, vested with the power to provide that, in all elections authorized to be held by the organic act of the Territory of Hawaii, female citizens possessing the same qualifications as male citizens shall be entitled to vote. [*— Stat. L. —.*]

SEC. 2. [**Determination by voters of Territory.**] That the said Legislature is further hereby vested with the power to have submitted to the voters of the Territory of Hawaii the question of whether or not the female citizens of the Territory shall be empowered to vote at elections held under the laws of the Territory of Hawaii. [*— Stat. L. —.*]

SEC. 3. [**Repeal of conflicting provisions.**] That all provisions of the organic act of the Territory of Hawaii restricting the right to vote to male citizens which are in conflict with the provisions hereof are hereby repealed. [*— Stat. L. —.*]

SEC. 4. [**Effect — application.**] That this Act shall take effect and be enforced from and after its approval, and shall be held to apply to both Territorial and municipal elections. [*— Stat. L. —.*]

HEALTH AND QUARANTINE

Act of April 17, 1917, ch. —, 204.

Sec. 1. Vessels from Foreign Ports — Fumigation — Disinfection, 204.

Res. of July 9, 1917, No. 9, 204.

Public Health Service — Officers — War Service — Status and Rights — Pensions, 204.

Act of July 1, 1918, ch. —, 204.

Sec. 1. Officers of Public Health Service — Allotment of Pay, 204.

Detail for Service with Bureau of Mines, 204.

Attendants at Marine Hospitals, Quarantine and Immigration Stations — Pay Increased, 205.

Act of July 9, 1918, ch. —, 205.

Chapter XV.

Sec. 1. Interdepartmental Social Hygiene Board — Composition — Duties, 205.

2. Assistance to States in Caring for Detained, Committed, etc., Persons, 205.

3. Division of Venereal Diseases Established — Composition, 205.

4. Duties of Division, 205.

5. Appropriation to Assist States in Caring for Detained, etc., Persons, 206.

Sec. 6. Appropriation for State Boards of Health and Educational Institutions — Conditions of Payment, 206.

7. Appropriation for Division of Venereal Diseases and Interdepartmental Social Hygiene Board, 207.

8. "State" as Including District of Columbia, 207.

[SEC. 1.] **[Vessels from foreign ports — fumigation — disinfection.]**
 * * * Hereafter the cost of fumigation and disinfection shall be charged vessels from foreign ports at rates to be fixed by the Secretary of the Treasury. [— *Stat. L.* —.]

This is from the Deficiencies Appropriation Act of April 17, 1917, ch. —.

Joint Resolution To fix the status and rights of officers of the Public Health Service when serving with the Coast Guard, the Army, or the Navy.

[*Res. of July 9, 1917, No. 9, — Stat. L.* —.]

[Public health service — officers — war service — status and rights — pensions.] That when officers of the United States Public Health Service are serving on Coast Guard vessels in time of war, or are detailed in time of war for duty with the Army or Navy in accordance with law, they shall be entitled to pensions for themselves and widows and children, if any, as are now provided for officers of corresponding grade and length of service of the Coast Guard, Army or Navy, as the case may be, and shall be subject to the laws prescribed for the government of the service to which they are respectively detailed. [— *Stat. L.* —.]

[SEC. 1.] **[Officers of Public Health Service — Allotment of pay.]**
 * * * The Secretary of the Treasury is authorized to permit officers of the Public Health Service to make allotments from their pay under such regulations as he may prescribe. [— *Stat. L.* —.]

This and the two following paragraphs of the text are from the Sundry Civil Appropriation Act of July 1, 1918, ch. —.

[Detail for Service with Bureau of Mines.] The Secretary of the Treasury may detail medical officers of the Public Health Service for cooperative health, safety, or sanitation work with the Bureau of Mines, and the compensation and expenses of officers so detailed may be paid from the applicable appropriations made herein for the Bureau of Mines. [— *Stat. L.* —.]

[Attendants at Marine hospitals, quarantine and immigration stations — pay increased.] * * * That the pay of attendants at marine hospitals, quarantine, and immigration stations, whose present compensation is less than the rate of \$1,200 per annum, may be increased to a rate not to exceed \$1,200 per annum; [— *Stat. L.* —.]

[Sec. 1.] [Interdepartmental Social Hygiene Board — composition — duties.] That there is hereby created a board to be known as the Interdepartmental Social Hygiene Board, to consist of the Secretary of War, the Secretary of the Navy, and the Secretary of the Treasury as ex officio members, and of the Surgeon General of the Army, the Surgeon General of the Navy, and the Surgeon General of the Public Health Service, or of representatives designated by the Secretary of War, the Secretary of the Navy, and the Secretary of the Treasury, respectively. The duties of the board shall be: (1) To recommend rules and regulations for the expenditure of moneys allotted to the States under section five of this chapter; (2) to select the institutions and organizations and fix the allotments to each institution under said section five; (3) to recommend to the Secretary of the Treasury, the Secretary of War, and the Secretary of the Navy such general measures as will promote correlation and efficiency in carrying out the purposes of this chapter by their respective departments; and (4) to direct the expenditure of the sum of \$100,000 referred to in the last paragraph of section seven of this chapter. The board shall meet at least quarterly, and shall elect annually one of its members as chairman, and shall adopt rules and regulations for the conduct of its business. [— *Stat. L.* —.]

The foregoing section 1 and the following sections 2-8 are from chapter XV of the Army Appropriation Act of July 9, 1918, ch. —.

SEC. 2. [Assistance to States in caring for detained, committed, etc., persons.] That the Secretary of War and the Secretary of the Navy are hereby authorized and directed to adopt measures for the purpose of assisting the various States in caring for civilian persons whose detention, isolation, quarantine, or commitment to institutions may be found necessary for the protection of the military and naval forces of the United States against venereal disease. [— *Stat. L.* —.]

SEC. 3. [Division of Venereal Diseases established — composition.] That there is hereby established in the Bureau of the Public Health Service a Division of Venereal Diseases, to be under the charge of a commissioned medical officer of the United States Public Health Service detailed by the Surgeon General of the Public Health Service, which officer while thus serving shall be an Assistant Surgeon General of the Public Health Service, subject to the provisions of law applicable to assistant surgeons general in charge of administrative divisions in the District of Columbia of the Bureau of the Public Health Service. There shall be in such division such assistants, clerks, investigators, and other employees as may be necessary for the performance of its duties and as may be provided for by law. [— *Stat. L.* —.]

SEC. 4. [Duties of division.] That the duties of the Division of Venereal Diseases shall be in accordance with rules and regulations prescribed by the Secretary of the Treasury (1) to study and investigate the cause, treatment, and prevention of venereal diseases; (2) to cooperate with State boards or departments of health for the prevention and control of such

diseases within the State; and (3) to control and prevent the spread of these diseases in interstate traffic: *Provided*, That nothing in this chapter shall be construed as limiting the functions and activities of other departments or bureaus in the prevention, control, and treatment of venereal diseases and in the expenditure of moneys therefor. [— *Stat. L.* —.]

SEC. 5. [Appropriation to assist States in caring for detained, etc., persons.] That there is hereby appropriated, out of any money in the Treasury not otherwise appropriated, the sum of \$1,000,000, to be expended under the joint direction of the Secretary of War and the Secretary of the Navy to carry out the provisions of section two of this chapter: *Provided*, That the appropriation herein made shall not be deemed exclusive, but shall be in addition to other appropriations of a more general character which are applicable to the same or similar purposes. [— *Stat. L.* —.]

SEC. 6. [Appropriation for State boards of health and educational institutions — conditions of payment.] That there is hereby appropriated, out of any moneys in the Treasury not otherwise appropriated, the sum of \$1,400,000 annually for two fiscal years, beginning with the fiscal year commencing July first, nineteen hundred and eighteen, to be apportioned as follows: The sum of \$1,000,000, which shall be paid to the States for the use of their respective boards or departments of health in the prevention, control, and treatment of venereal diseases; this sum to be allotted to each State, in accordance with the rules and regulations prescribed by the Secretary of the Treasury, in the proportion which its population bears to the population of the continental United States, exclusive of Alaska and the Canal Zone, according to the last preceding United States census, and such allotment to be so conditioned that for each dollar paid to any State the State shall specifically appropriate or otherwise set aside an equal amount for the prevention, control, and treatment of venereal diseases, except for the fiscal year ending June thirtieth, nineteen hundred and nineteen, for which the allotment of money is not conditioned upon the appropriation or setting aside of money by the State, provided that any State may obtain any part of its allotment for any fiscal year subsequent to June thirtieth, nineteen hundred and nineteen, by specifically appropriating or otherwise setting aside an amount equal to such part of its allotment for the prevention, control, and treatment of venereal diseases; the sum of \$100,000, which shall be paid to such universities, colleges, or other suitable institutions, as in the judgment of the Interdepartmental Social Hygiene Board are qualified for scientific research, for the purpose of discovering, in accordance with rules and regulations prescribed by the Interdepartmental Social Hygiene Board, more effective medical measures in the prevention and treatment of venereal diseases; the sum of \$300,000, which shall be paid to such universities, colleges, or other suitable institutions or organizations, as in the judgment of the Interdepartmental Social Hygiene Board are qualified for scientific research, for the purpose of discovering and developing more effective educational measures in the prevention of venereal diseases, and for the purpose of sociological and psychological research related thereto. [— *Stat. L.* —.]

SEC. 7. [Appropriation for Division of Venereal Diseases and Interdepartmental Social Hygiene Board.] That there is hereby appropriated, out of any money in the Treasury not otherwise appropriated, the sum of \$300,000 for the fiscal year ending June thirtieth, nineteen hundred and nineteen, to be apportioned as follows: The sum of \$200,000 to defray the expenses of the establishment and maintenance of the Division of Venereal Diseases in the Bureau of the Public Health Service: and the sum of \$100,000 to be used under the direction of the Interdepartmental Social Hygiene Board for any purpose for which any of the appropriations made by this chapter are available. [— *Stat. L.* —.]

SEC. 8. [“ State ” as including District of Columbia.] That the terms “ State ” and “ States,” as used in this chapter, shall be held to include the District of Columbia. [— *Stat. L.* —.]

See the note to section 1 of this chapter, *supra*, p. 205.

A further paragraph of this section, omitted here, is given in **EMINENT DOMAIN**, *ante*, p. 167.

HOLIDAYS

See **POSTAL SERVICE**

HOMESTEADS

See **ALASKA ; PUBLIC LANDS**

HOSPITALS AND ASYLUMS

Act of July 1, 1916, ch. 209, 208.

Sec. 1. Marine Hospitals — Admission of Persons for Study, 208.

Government Hospital for Insane — Change of Name, 208.

Freedmen's Hospital — Unclaimed Money of Deceased Patients, 208.

Act of Feb. 3, 1917, ch. 26, 208.

Sec. 1. Leprosy — Care and Treatment — Establishment of Home — Site — Administration, 208.

2. Inmates of Home — Expense of Transportation, 209.

3. Regulations, 209.

4. Erection of Buildings — Cost, 209.

5. Officers of Public Health Service — Detail for Duty at Home — Pay and Allowances, 209.

6. Appropriation, 209.

Act of May 12, 1917, ch. —, 209.

Army Hospitals — Erection — Authority of Congress, 209.

Act of June 12, 1917, ch. —, 210.

Sec. 1. Canal Zone — Insane Persons, 210.

Act of Oct. 6, 1917, ch. —, 210.

Sec. 1. Insane Persons under Jurisdiction of War Department — Disposition, 210.

Act of July 1, 1918, ch. —, 211.

Sec. 1. Saint Elizabeth's Hospital — Payment by Public Health Service for Persons Admitted, 211.

[SEC. 1.] **[Marine hospitals — admission of persons for study.] * * ***

That there may be admitted into said hospitals for study persons with infectious or other diseases affecting the public health, and not to exceed ten cases in any one hospital at one time. [39 Stat. L. 278.]

The foregoing paragraph and the two paragraphs of the text following are from the Sundry Civil Appropriation Act of July 1, 1916, ch. 209.

This paragraph follows an appropriation for marine hospitals to which the words "said hospitals" refer. Identical provisions have appeared in both prior and subsequent sections of this chapter.

[Government hospital for insane — change of name.] * * * After the passage of this Act the Government Hospital for the Insane shall be known and designated as Saint Elizabeths Hospital. [39 Stat. L. 309.]

See the note to the preceding paragraph of the text.

The Government Hospital for the Insane was authorized to be established by R. S. sec. 4838. See 3 Fed. Stat. Ann. 272; 3 Fed. Stat. Ann. (2d ed.) 598.

[Freedmen's Hospital — unclaimed money of deceased patients.] * * *

Hereafter all unclaimed money left at the Freedmen's Hospital by deceased patients shall, after a period of three years, be deposited in the Treasury of the United States to the credit of miscellaneous receipts. [39 Stat. L. 311.]

See the note to the second preceding paragraph of this Act.

An Act To provide for the care and treatment of persons afflicted with leprosy and to prevent the spread of leprosy in the United States.

[Act of Feb. 3, 1917, ch. 26, 39 Stat. L. 872.]

[SEC. 1.] **[Leprosy — care and treatment — establishment of home — site — administration.]** That for the purpose of carrying out the provisions of this Act the Secretary of the Treasury is authorized to select and obtain, by purchase or otherwise, a site suitable for the establishment of a home for the care and treatment of persons afflicted with leprosy, to be administered by the United States Public Health Service; and either the Secretary of War, the Secretary of the Navy, the Secretary of the Interior, or the Secretary of Agriculture is authorized to transfer to the Secretary of the Treasury any abandoned military, naval, or other reservation suitable for the purpose, or as much thereof as may be necessary, with all buildings and improvements thereon, to be used for the purpose of said home. [39 Stat. L. 872.]

SEC. 2. [Inmates of home — expense of transportation.] That there shall be received into said home, under regulations prepared by the Surgeon General of the Public Health Service, with the approval of the Secretary of the Treasury, any person afflicted with leprosy who presents himself or herself for care, detention, and treatment, or who may be apprehended under authority of the United States quarantine Acts, or any person afflicted with leprosy duly consigned to said home by the proper health authorities of any State, Territory, or the District of Columbia. The Surgeon General of the Public Health Service is authorized, upon request of said authorities, to send for any person afflicted with leprosy within their respective jurisdictions, and to convey said person to such home for detention and treatment, and when the transportation of any such person is undertaken for the protection of the public health, the expense of such removal shall be paid from funds set aside for the maintenance of said home. [39 Stat. L. 873.]

SEC. 3. [Regulations.] That regulations shall be prepared by the Surgeon General of the Public Health Service, with the approval of the Secretary of the Treasury, for the government and administration of said home and for the apprehension, detention, treatment, and release of all persons who are inmates thereof. [39 Stat. L. 873.]

SEC. 4. [Erection of buildings — cost.] That the Secretary of the Treasury be, and he is hereby, authorized to cause the erection upon such site of suitable and necessary buildings for the purposes of this Act at a cost not to exceed the sum herein appropriated for such purpose. [39 Stat. L. 873.]

SEC. 5. [Officers of Public Health Service — detail for duty at home — pay and allowances.] That when any commissioned or other officer of the Public Health Service is detailed for duty at the home herein provided for he shall receive, in addition to the pay and allowances of his grade, one-half the pay of said grade and such allowances as may be provided by the Surgeon General of the Public Health Service, with the approval of the Secretary of the Treasury. [39 Stat. L. 873.]

SEC. 6. [Appropriation.] That for the purposes of carrying out the provisions of this Act there is hereby appropriated, from any money in the Treasury not otherwise appropriated, the sum of \$250,000, or as much thereof as may be necessary, for the preparation of said home, including the erection of necessary buildings, the maintenance of the patients, pay, and maintenance of necessary officers and employees, until June thirtieth, nineteen hundred and seventeen. [39 Stat. L. 873.]

[Army hospitals — erection — authority of Congress.] • • • That no building or structure of a permanent nature, the cost of which shall

exceed \$30,000, shall hereafter be erected for use as an Army hospital unless by special authority of Congress. [— *Stat. L.* —.]

This is from the Army Appropriation Act of May 12, 1917, ch. —.

[SEC. 1.] [Canal Zone—insane persons.] * * * Upon the application of the governor of the Panama Canal the Secretary of the Interior is authorized to transfer to Saint Elizabeths Hospital, in the District of Columbia, for treatment all American citizens legally adjudged insane in the Canal Zone whose legal residence in one of the States and Territories or the District of Columbia it has been impossible to establish. Upon the ascertainment of the legal residence of persons so transferred to the hospital, the superintendent of the hospital shall thereupon transfer such persons to their respective places of residence, and the expenses attendant thereon shall be paid from the appropriation for the support of the hospital. [— *Stat. L.* —.]

This is from the Sundry Civil Appropriation Act of June 12, 1917, ch. —.

[SEC. 1.] [Insane persons under jurisdiction of war department—disposition.] * * * The Secretary of War is authorized, during the existing emergency, to transfer to the various public hospitals for the care of the insane, patients of every class entitled to treatment in Saint Elizabeths Hospital and that are admitted on order of the Secretary of War.

The Secretary of War is authorized to transfer from any military hospital to the nearest available public hospital for the care of the insane any insane patient who is in need of treatment, preference being given to the hospital nearest to the place of the patient's enlistment. The superintendent of such public hospital shall possess the right to retain the aforementioned class of patients in his hospital in the same manner and to the same extent as now possessed by the Superintendent of Saint Elizabeths Hospital.

The Superintendent of Saint Elizabeths Hospital, with the approval of the Secretary of the Interior, shall transfer to the various public hospitals out of the various appropriations made by Congress for the support and treatment of patients in Saint Elizabeths Hospital a sum sufficient to pay for the support and treatment of patients sent to public hospitals as herein provided, based upon the per capita cost of maintenance in Saint Elizabeths Hospital, said payment not to exceed at any time the exact cost of support and treatment of such patients.

The Secretary of War is authorized to grant a revocable permit to the Saint Elizabeths Hospital for the use of such portions of land as are at present not under lease and such other portions thereof as leases thereof expire, of that portion of land lying along Anacostia Flats which has been reclaimed by the War Department and is valuable for farming purposes.

Interned persons and prisoners of war, under the jurisdiction of the War Department, who are or may become insane hereafter shall be entitled to admission for treatment to Saint Elizabeths Hospital. [—*Stat. L.*—]

This is from the Deficiencies Appropriations Act of Oct. 6, 1917, ch. —.

[SEC. 1.] [Saint Elizabeth's Hospital—payment by Public Health Service for persons admitted.] * * * That the Public Health Service, from and after July first, nineteen hundred and eighteen, shall pay to Saint Elizabeth's Hospital the actual per capita cost of maintenance in the said hospital of patients committed by that service. [—*Stat. L.*—]

This is from the Sundry Civil Appropriation Act of July 1, 1918, ch. —.

HOUSE OF REPRESENTATIVES

See CONGRESS •

IMMIGRATION

Ad of Feb. 5, 1917, ch. 29, 212.

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Classes of Aliens Excluded — Admission After Military or Naval Service with United States or Cobelligerents — Application — Disabilities Acquired in Service — Head Tax, 241.

An Act To regulate the immigration of aliens to, and the residence of aliens in, the United States.

[*Act of Feb. 5, 1917, ch. 29, 39 Stat. L. 874.*]

[**Sec. 1.**] [**Immigration — regulation — "Alien," "United States," "Seaman" defined — Isthmian Canal Zone and insular possessions — Philippine Islands.**] That the word "alien" wherever used in this Act shall include any person not a native-born or naturalized citizen of the

United States; but this definition shall not be held to include Indians of the United States not taxed or citizens of the islands under the jurisdiction of the United States. That the term "United States" as used in the title as well as in the various sections of this Act shall be construed to mean the United States, and any waters, territory, or other place subject to the jurisdiction thereof, except the Isthmian Canal Zone; but if any alien shall leave the Canal Zone or any insular possession of the United States and attempt to enter any other place under the jurisdiction of the United States, nothing contained in this Act shall be construed as permitting him to enter under any other conditions than those applicable to all aliens. That the term "seaman" as used in this Act shall include every person signed on the ship's articles and employed in any capacity on board any vessel arriving in the United States from any foreign port or place.

That this Act shall be enforced in the Philippine Islands by officers of the general government thereof, unless and until it is superseded by an act passed by the Philippine Legislature and approved by the President of the United States to regulate immigration in the Philippine Islands as authorized in the Act entitled "An Act to declare the purpose of the people of the United States as to the future political status of the people of the Philippine Islands, and to provide a more autonomous government for those islands," approved August twenty-ninth, nineteen hundred and sixteen. [39 Stat. L. 874.]

For the Act of Aug. 29, 1916, ch. 416, mentioned in this section, see PHILIPPINE ISLANDS, *post*.

This bill having been vetoed by the President, there appeared at the end of final section 38 thereof, the following:

"CHAMP CLARK,
Speaker of the House of Representatives.

"THOS. R. MARSHALL
*Vice President of the United States and
President of the Senate.*

"IN THE HOUSE OF REPRESENTATIVES

OF THE UNITED STATES.

February 1, 1917.

"The President of the United States having returned to the House of Representatives, in which it originated, the bill (H. R. 10384) 'To regulate the immigration of aliens to, and the residence of aliens in, the United States,' with his objections thereto, the House proceeded in pursuance of the Constitution to reconsider the same; and,

"Resolved, That the said bill pass, two-thirds of the House of Representatives agreeing to pass the same.

"Attest:

SOUTH TRIMBLE
Clerk.

"IN THE SENATE OF THE UNITED STATES.

February 5, 1917.

"The Senate having proceeded, in pursuance of the Constitution, to reconsider the bill (H. R. 10384) entitled 'An Act to regulate the immigration of aliens to, and the residence of aliens in, the United States,' returned to the House of Representatives by the President of the United States, with his objections, and sent by the House of Representatives to the Senate with the message of the President returning the bill,

"Resolved, That the bill do pass, two-thirds of the Senate agreeing to pass the same.

"Attest:

JAMES M. BAKER
Secretary."

SEC. 2. [Head tax — imposition — payment — lien on vessel.] That there shall be levied, collected, and paid a tax of \$8 for every alien, including

alien seamen regularly admitted as provided in this Act, entering the United States: *Provided*, That children under sixteen years of age who accompany their father or their mother shall not be subject to said tax. The said tax shall be paid to the collector of customs of the port or customs district to which said alien shall come, or, if there be no collector at such port or district, then to the collector nearest thereto, by the master, agent, owner, or consignee of the vessel, transportation line, or other conveyance or vehicle bringing such alien to the United States, or by the alien himself if he does not come by vessel, transportation line, or other conveyance or vehicle or when collection from the master, agent, owner, or consignee of the vessel, transportation line, or other conveyance, or vehicle bringing such alien to the United States is impracticable. The tax imposed by this section shall be a lien upon the vessel or other vehicle of carriage or transportation bringing such aliens to the United States, and shall be a debt in favor of the United States against the owner or owners of such vessel or other vehicle, and the payment of such tax may be enforced by any legal or equitable remedy. That the said tax shall not be levied on account of aliens who enter the United States after an uninterrupted residence of at least one year immediately preceding such entrance in the Dominion of Canada, Newfoundland, the Republic of Cuba, or the Republic of Mexico, for a temporary stay, nor on account of otherwise admissible residents or citizens of any possession of the United States, nor on account of aliens in transit through the United States, nor upon aliens who have been lawfully admitted to the United States and who later shall go in transit from one part of the United States to another through foreign contiguous territory, and the Commissioner General of Immigration with the approval of the Secretary of Labor shall issue rules and regulations and prescribe the conditions necessary to prevent abuse of these exceptions: *Provided*, That the Commissioner General of Immigration, under the direction or with the approval of the Secretary of Labor, by agreement with transportation lines, as provided in section twenty-three of this Act, may arrange in some other manner for the payment of the tax imposed by this section upon any or all aliens seeking admission from foreign contiguous territory: *Provided further*, That said tax, when levied upon aliens entering the Philippine Islands, shall be paid into the treasury of said islands, to be expended for the benefit of such islands: *Provided further*, That in the cases of aliens applying for admission from foreign contiguous territory and rejected, the head tax collected shall upon application, upon a blank which shall be furnished and explained to him, be refunded to the alien. [39 Stat. L. 875.]

SEC. 3. [Classes of aliens excluded.] That the following classes of aliens shall be excluded from admission into the United States: All idiots, imbeciles, feeble-minded persons, epileptics, insane persons; persons who have had one or more attacks of insanity at any time previously; persons of constitutional psychopathic inferiority; persons with chronic alcoholism; paupers; professional beggars; vagrants; persons afflicted with tuberculosis in any form or with a loathsome or dangerous contagious disease; persons not comprehended within any of the foregoing excluded classes who are found to be and are certified by the examining surgeon as being mentally

or physically defective, such physical defect being of a nature which may affect the ability of such alien to earn a living; persons who have been convicted of or admit having committed a felony or other crime or misdemeanor involving moral turpitude; polygamists, or persons who practice polygamy or believe in or advocate the practice of polygamy; anarchists, or persons who believe in or advocate the overthrow by force or violence of the Government of the United States, or of all forms of law, or who disbelieve in or are opposed to organized government, or who advocate the assassination of public officials, or who advocate or teach the unlawful destruction of property; persons who are members of or affiliated with any organization entertaining and teaching disbelief in or opposition to organized government, or who advocate or teach the duty, necessity, or propriety of the unlawful assaulting or killing of any officer or officers, either of specific individuals or of officers generally, of the Government of the United States or of any other organized government, because of his or their official character, or who advocate or teach the unlawful destruction of property; prostitutes, or persons coming into the United States for the purpose of prostitution or for any other immoral purpose; persons who directly or indirectly procure or attempt to procure or import prostitutes or persons for the purpose of prostitution or for any other immoral purpose; persons who are supported by or receive in whole or in part the proceeds of prostitution; persons hereinafter called contract laborers, who have been induced, assisted, encouraged, solicited to migrate to this country by offers or promises of employment, whether such offers or promises are true or false, or in consequence of agreements, oral, written or printed, express or implied, to perform labor in this country of any kind, skilled or unskilled; persons who have come in consequence of advertisements for laborers printed, published, or distributed in a foreign country; persons likely to become a public charge; persons who have been deported under any of the provisions of this Act, and who may again seek admission within one year from the date of such deportation, unless prior to their reembarkation at a foreign port or their attempt to be admitted from foreign contiguous territory the Secretary of Labor shall have consented to their reapplying for admission; persons whose tickets or passage is paid for with the money of another, or who are assisted by others to come, unless it is affirmatively and satisfactorily shown that such persons do not belong to one of the foregoing excluded classes; persons whose ticket or passage is paid for by any corporation, association, society, municipality, or foreign Government, either directly or indirectly; stowaways, except that any such stowaway, if otherwise admissible, may be admitted in the discretion of the Secretary of Labor; all children under sixteen years of age, unaccompanied by or not coming to one or both of their parents, except that any such children may, in the discretion of the Secretary of Labor, be admitted if in his opinion they are not likely to become a public charge and are otherwise eligible; unless otherwise provided for by existing treaties, persons who are natives of islands not possessed by the United States adjacent to the Continent of Asia, situate south of the twentieth parallel latitude north, west of the one hundred and sixtieth meridian of longitude east from Greenwich, and north of the tenth parallel of latitude south, or who are natives of any country, province, or

dependency situate on the Continent of Asia west of the one hundred and tenth meridian of longitude east from Greenwich and east of the fiftieth meridian of longitude east from Greenwich, and south of the fiftieth parallel of latitude north, except that portion of said territory situate between the fiftieth and sixty-fourth meridians of longitude east from Greenwich and the twenty-fourth and thirty-eighth parallels of latitude north, and no alien now in any way excluded from, or prevented from entering, the United States shall be admitted to the United States. The provision next foregoing, however, shall not apply to persons of the following status or occupations: Government officers, ministers or religious teachers, missionaries, lawyers, physicians, chemists, civil engineers, teachers, students, authors, artists, merchants, and travelers for curiosity or pleasure, nor to their legal wives or their children under sixteen years of age who shall accompany them or who subsequently may apply for admission to the United States, but such persons or their legal wives or foreign-born children who fail to maintain in the United States a status or occupation placing them within the excepted classes shall be deemed to be in the United States contrary to law, and shall be subject to deportation as provided in section nineteen of this Act.

That after three months from the passage of this Act, in addition to the aliens who are by law now excluded from admission into the United States, the following persons shall also be excluded from admission thereto, to wit:

All aliens over sixteen years of age, physically capable of reading, who can not read the English language, or some other language or dialect, including Hebrew or Yiddish: *Provided*, That any admissible alien, or any alien heretofore or hereafter legally admitted, or any citizen of the United States, may bring in or send for his father or grandfather over fifty-five years of age, his wife, his mother, his grandmother, or his unmarried or widowed daughter, if otherwise admissible, whether such relative can read or not; and such relative shall be permitted to enter. That for the purpose of ascertaining whether aliens can read the immigrant inspectors shall be furnished with slips of uniform size, prepared under the direction of the Secretary of Labor, each containing not less than thirty nor more than forty words in ordinary use, printed in plainly legible type in some one of the various languages or dialects of immigrants. Each alien may designate the particular language or dialect in which he desires the examination to be made, and shall be required to read the words printed on the slip in such language or dialect. That the following classes of persons shall be exempt from the operation of the illiteracy test, to wit: All aliens who shall prove to the satisfaction of the proper immigration officer or to the Secretary of Labor that they are seeking admission to the United States to avoid religious persecution in the country of their last permanent residence, whether such persecution be evidenced by overt acts or by laws or governmental regulations that discriminate against the alien or the race to which he belongs because of his religious faith; all aliens who have been lawfully admitted to the United States and who have resided therein continuously for five years and who return to the United States within six months from the date of their departure therefrom; all aliens in transit through the United States; all aliens who have been lawfully admitted to the United States and who later shall go in transit from one part

of the United States to another through foreign contiguous territory: *Provided*, That nothing in this Act shall exclude, if otherwise admissible, persons convicted, or who admit the commission, or who teach or advocate the commission, of an offense purely political: *Provided further*, That the provisions of this Act, relating to the payments for tickets or passage by any corporation, association, society, municipality, or foreign Government shall not apply to the tickets or passage of aliens in immediate and continuous transit through the United States to foreign contiguous territory: *Provided further*, That skilled labor, if otherwise admissible, may be imported if labor of like kind unemployed can not be found in this country, and the question of the necessity of importing such skilled labor in any particular instance may be determined by the Secretary of Labor upon the application of any person interested, such application to be made before such importation, and such determination by the Secretary of Labor to be reached after a full hearing and an investigation into the facts of the case: *Provided further*, That the provisions of this law applicable to contract labor shall not be held to exclude professional actors, artists, lecturers, singers, nurses, ministers of any religious denomination, professors for colleges or seminaries, persons belonging to any recognized learned profession, or persons employed as domestic servants: *Provided further*, That whenever the President shall be satisfied that passports issued by any foreign Government to its citizens or subjects to go to any country other than the United States, or to any insular possession of the United States or to the Canal Zone, are being used for the purpose of enabling the holder to come to the continental territory of the United States to the detriment of labor conditions therein, the President shall refuse to permit such citizens or subjects of the country issuing such passports to enter the continental territory of the United States from such other country or from such insular possession or from the Canal Zone: *Provided further*, That aliens returning after a temporary absence to an unrelinquished United States domicile of seven consecutive years may be admitted in the discretion of the Secretary of Labor, and under such conditions as he may prescribe: *Provided further*, That nothing in the contract-labor or reading-test provisions of this Act shall be construed to prevent, hinder, or restrict any alien exhibitor, or holder of concession or privilege for any fair or exposition authorized by Act of Congress, from bringing into the United States, under contract, such otherwise admissible alien mechanics, artisans, agents, or other employees, natives of his country as may be necessary for installing or conducting his exhibit or for preparing for installing or conducting any business authorized or permitted under any concession or privilege which may have been or may be granted by any such fair or exposition in connection therewith, under such rules and regulations as the Commissioner General of Immigration, with the approval of the Secretary of Labor, may prescribe both as to the admission and return of such persons: *Provided further*, That the Commissioner General of Immigration with the approval of the Secretary of Labor shall issue rules and prescribe conditions, including exaction of such bonds as may be necessary, to control and regulate the admission and return of otherwise inadmissible aliens applying for temporary admission: *Provided further*, That nothing in this Act shall be

construed to apply to accredited officials of foreign Governments, nor to their suites, families, or guests. [39 Stat. L. 875.]

Certain classes of aliens excluded by this Act are to be admitted notwithstanding this section of the Res. of June 29, 1918, No. —, *infra*, p. 241.

Deserter from Canadian army.—A Canadian soldier who enters the United States on a furlough and outstays his furlough, cannot, though a deserter, be excluded under this section which provides for the exclusion from the United States of persons having been convicted

of, or admitting the commission of, prior to entry, a felony or other crime, or a misdemeanor involving moral turpitude, because "prior to entry" he had not committed a crime, even though the intention then existed of outstaying the furlough. *See* p. Hill, 245 Fed. 687.

SEC. 4. [Importation of prostitutes — aliens imported for immoral purpose — penalty — jurisdiction of courts — evidence.] That the importation into the United States of any alien for the purpose of prostitution, or for any other immoral purpose, is hereby forbidden; and whoever shall, directly or indirectly, import, or attempt to import into the United States any alien for the purpose of prostitution or for any other immoral purpose, or shall hold or attempt to hold any alien for any such purpose in pursuance of such illegal importation, or shall keep, maintain, control, support, employ, or harbor in any house or other place, for the purpose of prostitution or for any other immoral purpose, any alien, in pursuance of such illegal importation, shall in every such case be deemed guilty of a felony, and on conviction thereof shall be punished by imprisonment for a term of not more than ten years and by a fine of not more than \$5,000. Jurisdiction for the trial and punishment of the felonies hereinbefore set forth shall be in any district to or into which said alien is brought in pursuance of said importation by the person or persons accused, or in any district in which a violation of any of the foregoing provisions of this section occurs. That any alien who shall, after he has been excluded and deported or arrested and deported in pursuance of the provisions of this Act which relate to prostitutes, procurers, or other like immoral persons, attempt thereafter to return to or to enter the United States shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by imprisonment for a term of not more than two years. In all prosecutions under this section the testimony of a husband or wife shall be admissible and competent evidence against each other. [39 Stat. L. 878.]

SEC. 5. [Contract laborers — prohibition of importation — penalties.] That it shall be unlawful for any person, company, partnership, or corporation, in any manner whatsoever, to prepay the transportation or in any way to induce, assist, encourage, or solicit, or attempt to induce, assist, encourage, or solicit the importation or migration of any contract laborer or contract laborers into the United States, unless such contract laborer or contract laborers are exempted under the fifth proviso of section three of this Act, or have been imported with the permission of the Secretary of Labor in accordance with the fourth proviso of said section, and for every violation of any of the provisions of this section the person, partnership, company, or corporation violating the same shall forfeit and pay for every such offense the sum of \$1,000, which may be sued for and recovered by the United States, as debts of like amount are now recovered in the courts of

the United States. For every violation of the provisions hereof the person violating the same may be prosecuted in a criminal action for a misdemeanor, and on conviction thereof shall be punished by a fine of \$1,000, or by imprisonment for a term of not less than six months nor more than two years; and under either the civil or the criminal procedure mentioned separate suits or prosecutions may be brought for each alien thus offered or promised employment as aforesaid. The Department of Justice, with the approval of the Department of Labor, may from any fines or penalties received pay rewards to persons other than Government employees who may furnish information leading to the recovery of any such penalties, or to the arrest and punishment of any person, as in this section provided. [39 Stat. L. 879.]

SEC. 6. [Encouraging immigration by promises of employment, etc.—penalty.] That it shall be unlawful and be deemed a violation of section five of this Act to induce, assist, encourage, or solicit or attempt to induce, assist, encourage, or solicit any alien to come into the United States by promise of employment through advertisements printed, published, or distributed in any foreign country, whether such promise is true or false, and either the civil or criminal penalty or both imposed by said section shall be applicable to such a case. [39 Stat. L. 879.]

SEC. 7. [Encouraging immigration forbidden — penalties.] That it shall be unlawful for any person, association, society, company, partnership, corporation, or others engaged in the business of transporting aliens to or within the United States, including owners, masters, officers, and agents of vessels, directly or indirectly, by writing, printing, oral representation, payment of any commissions to an alien coming into the United States, allowance of any rebates to an alien coming into the United States, or otherwise to solicit, invite, or encourage or attempt to solicit, invite, or encourage any alien to come into the United States, and anyone violating any provision hereof shall be subject to either the civil or the criminal prosecution or both, prescribed by section five of this Act; or if it shall appear to the satisfaction of the Secretary of Labor that any owner, master, officer, or agent of a vessel has brought or caused to be brought to a port of the United States any alien so solicited, invited, or encouraged to come by such owner, master, officer, or agent, such owner, master, officer, or agent shall pay to the collector of customs of the customs district in which the port of arrival is located, or in which any vessel of the line may be found, the sum of \$400 for each and every such violation; and no vessel shall be granted clearance pending the determination of the question of the liability to the payment of such fine, or while the fine imposed remains unpaid, nor shall such fine be remitted or refunded: *Provided*, That clearance may be granted prior to the determination of such questions upon the deposit with the collector of customs of a sum sufficient to cover such fine: *Provided further*, That whenever it shall be shown to the satisfaction of the Secretary of Labor that the provisions of this section are persistently violated by or on behalf of any transportation company, it shall be the duty of said Secretary to deny to such company the privilege of landing alien immigrant passengers of any or all classes at United States

ports for such a period as in his judgment may be necessary to insure an observance of such provisions: *Provided further*, That this section shall not be held to prevent transportation companies from issuing letters, circulars, or advertisements, confined strictly to stating the sailing of their vessels and terms and facilities of transportation therein: *Provided further*, That under sections five, six and seven hereof it shall be presumed from the fact that any person, company, partnership, corporation, association, or society induces, assists, encourages, solicits or invites, or attempts to induce, assist, encourage, solicit or invite the importation, migration or coming of an alien from a country foreign to the United States, that the offender had knowledge of such person's alienage. [39 Stat. L. 879.]

SEC. 8. [Smuggling in aliens — penalty.] That any person, including the master, agent, owner, or consignee of any vessel, who shall bring into or land in the United States, by vessel or otherwise, or shall attempt, by himself or through another, to bring into or land in the United States, by vessel or otherwise, or shall conceal or harbor, or attempt to conceal or harbor, or assist or abet another to conceal or harbor in any place, including any building, vessel, railway car, conveyance, or vehicle, any alien not duly admitted by an immigrant inspector or not lawfully entitled to enter or to reside within the United States under the terms of this Act, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not exceeding \$2,000 and by imprisonment for a term not exceeding five years, for each and every alien so landed or brought in or attempted to be landed or brought in. [39 Stat. L. 880.]

SEC. 9. [Bringing in undesirable aliens — punishment.] That it shall be unlawful for any person, including any transportation company other than railway lines entering the United States from foreign contiguous territory, or the owner, master, agent, or consignee of any vessel to bring to the United States either from a foreign country or any insular possession of the United States any alien afflicted with idiocy, insanity, imbecility, feeble-mindedness, epilepsy, constitutional psychopathic inferiority, chronic alcoholism, tuberculosis in any form, or a loathsome or dangerous contagious disease, and if it shall appear to the satisfaction of the Secretary of Labor that any alien so brought to the United States was afflicted with any of the said diseases or disabilities at the time of foreign embarkation, and that the existence of such disease or disability might have been detected by means of a competent medical examination at such time, such person or transportation company, or the master, agent, owner, or consignee of any such vessel shall pay to the collector of customs of the customs district in which the port of arrival is located the sum of \$200, and in addition a sum equal to that paid by such alien for his transportation from the initial point of departure, indicated in his ticket, to the port of arrival for each and every violation of the provisions of this section, such latter sum to be delivered by the collector of customs to the alien on whose account assessed. It shall also be unlawful for any such person to bring to any port of the United States any alien afflicted with any mental defect other than those above specifically named, or physical defect of a nature which may affect his ability to earn a living, as contemplated

in section three of this Act, and if it shall appear to the satisfaction of the Secretary of Labor that any alien so brought to the United States was so afflicted at the time of foreign embarkation, and that the existence of such mental or physical defect might have been detected by means of a competent medical examination at such time, such person shall pay to the collector of customs of the customs district in which the port of arrival is located the sum of \$25, and in addition a sum equal to that paid by such alien for his transportation from the initial point of departure, indicated in his ticket, to the port of arrival, for each and every violation of this provision, such latter sum to be delivered by the collector of customs to the alien for whose account assessed. It shall also be unlawful for any such person to bring to any port of the United States any alien who is excluded by the provisions of section three of this Act because unable to read, or who is excluded by the terms of section three of this Act as a native of that portion of the Continent of Asia and the islands adjacent thereto described in said section, and if it shall appear to the satisfaction of the Secretary of Labor that these disabilities might have been detected by the exercise of reasonable precaution prior to the departure of such aliens from a foreign port, such person shall pay to the collector of customs of the customs district in which the port of arrival is located the sum of \$200, and in addition a sum equal to that paid by such alien for his transportation from the initial point of departure, indicated in his ticket, to the port of arrival, for each and every violation of this provision, such latter sum to be delivered by the collector of customs to the alien on whose account assessed. And no vessel shall be granted clearance papers pending the determination of the question of the liability to the payment of such fines, or while the fines remain unpaid, nor shall such fines be remitted or refunded: *Provided*, That clearance may be granted prior to the determination of such questions upon the deposit of a sum sufficient to cover such fines: *Provided further*, That nothing contained in this section shall be construed to subject transportation companies to a fine for bringing to ports of the United States aliens who are by any of the provisos or exceptions to section three hereof exempted from the excluding provisions of said section. [39 Stat. L. 880.]

Sec. 10. [Permitting landing of alien at improper time or place — punishment.] That it shall be the duty of every person, including owners, officers, and agents of vessels or transportation lines, or international bridges or toll roads, other than railway lines which may enter into a contract as provided in section twenty-three of this Act, bringing an alien to, or providing a means for an alien to come to, any seaport or land border port of the United States, to prevent the landing of such alien in the United States at any time or place other than as designated by the immigration officers, and the failure of any such person, owner, officer, or agent to comply with the foregoing requirements shall be deemed a misdemeanor and on conviction thereof shall be punished by a fine in each case of not less than \$200 nor more than \$1,000, or by imprisonment for a term not exceeding one year, or by both such fine and imprisonment; or, if in the opinion of the Secretary of Labor it is impracticable or inconvenient to prosecute the person, owner, master, officer, or agent of any such

vessel, a penalty of \$1,000 shall be a lien upon the vessel whose owner, master, officer, or agent violates the provisions of this section, and such vessel shall be libeled therefor in the appropriate United States court. [39 Stat. L. 881.]

SEC. 11. [Detention of aliens for examination.] That for the purpose of determining whether aliens arriving at ports of the United States belong to any of the classes excluded by this Act, either by reason of being afflicted with any of the diseases or mental or physical defects or disabilities mentioned in section three hereof, or otherwise, or whenever the Secretary of Labor has received information showing that any aliens are coming from a country or have embarked at a place where any of said diseases are prevalent or epidemic, the Commissioner General of Immigration, with the approval of the Secretary of Labor, may direct that such aliens shall be detained on board the vessel bringing them, or in a United States immigration station at the expense of such vessel, as circumstances may require or justify, a sufficient time to enable the immigration officers and medical officers stationed at such ports to subject aliens to an observation and examination sufficient to determine whether or not they belong to the said excluded classes by reason of being afflicted in the manner indicated: *Provided*, That, with a view to avoid undue delay in landing passengers or interference with commerce, the Commissioner General of Immigration may, with the approval of the Secretary of Labor, issue such regulations, not inconsistent with law, as may be deemed necessary to affect the purposes of this section: *Provided further*, That it shall be the duty of immigrant inspectors to report to the Commissioner General of Immigration the condition of all vessels bringing aliens to United States ports. [39 Stat. L. 881.]

SEC. 11a. [Detail of inspectors, etc., to vessels carrying aliens.] That the Secretary of Labor is hereby authorized and directed to enter into negotiations, through the Department of State, with countries vessels of which bring aliens to the United States, with a view to detailing inspectors and matrons of the United States Immigration Service for duty on vessels carrying immigrant or emigrant passengers between foreign ports and ports of the United States. When such inspectors and matrons are detailed for said duty they shall remain in that part of the vessel where immigrant passengers are carried; and it shall be their duty to observe such passengers during the voyage and report to the immigration authorities in charge at the port of landing any information of value in determining the admissibility of such passengers that may have become known to them during the voyage. [39 Stat. L. 882.]

SEC. 12. [Duties of master, etc., of vessels carrying aliens — manifests, etc.—details required.] That upon the arrival of any alien by water at any port within the United States on the North American Continent from a foreign port or a port of the Philippine Islands, Guam, Porto Rico, or Hawaii, or at any port of the said insular possessions from any foreign port, from a port in the United States on the North American Continent, or from a port of another insular possession of the United States, it shall

be the duty of the master or commanding officer, owners, or consignees of the steamer, sailing, or other vessel having said alien on board to deliver to the immigration officers at the port of arrival typewritten or printed lists or manifests made at the time and place of embarkation of such alien on board such steamer or vessel, which shall, in answer to questions at the top of said list, contain full and accurate information as to each alien as follows: Full name, age, and sex; whether married or single; calling or occupation; personal description (including height, complexion, color of hair and eyes, and marks of identification); whether able to read or write; nationality; country of birth; race; country of last permanent residence; name and address of the nearest relative in the country from which the alien came; seaport for landing in the United States; final destination, if any, beyond the port of landing; whether having a ticket through to such final destination; by whom passage was paid; whether in possession of \$50, and if less, how much; whether going to join a relative or friend, and, if so, what relative or friend, and his or her name and complete address; whether ever before in the United States, and if so, when and where; whether ever in prison or almshouse or an institution or hospital for the care and treatment of the insane; whether ever supported by charity; whether a polygamist; whether an anarchist; whether a person who believes in or advocates the overthrow by force or violence of the Government of the United States or of all forms of law, or who disbelieves in or is opposed to organized government, or who advocates the assassination of public officials, or who advocates or teaches the unlawful destruction of property, or is a member of or affiliated with any organization entertaining and teaching disbelief in or opposition to organized government, or which teaches the unlawful destruction of property, or who advocates or teaches the duty, necessity, or propriety of the unlawful assaulting or killing of any officer or officers, either of specific individuals or of officers generally, of the Government of the United States or of any other organized Government because of his or their official character; whether coming by reason of any offer, solicitation, promise, or agreement, express or implied, to perform labor in the United States; the alien's condition of health, mental and physical; whether deformed or crippled, and if so, for how long and from what cause; whether coming with the intent to return to the country whence such alien comes after temporarily engaging in laboring pursuits in the United States; and such other items of information as will aid in determining whether any such alien belongs to any of the excluded classes enumerated in section three hereof; and such master or commanding officer, owners, or consignees shall also furnish information in relation to the sex, age, class of travel, and the foreign port of embarkation of arriving passengers who are United States citizens. That it shall further be the duty of the master or commanding officer of every vessel taking passengers from any port of the United States on the North American Continent to a foreign port or a port of the Philippine Islands, Guam, Porto Rico, or Hawaii, or from any port of the said insular possessions to any foreign port, to a port of the United States on the North American Continent, or to a port of another insular possession of the United States to file with the immigration officials before departure a list which shall contain full and accurate information in relation to the following matters regarding all

alien passengers, and all citizens of the United States or insular possessions of the United States departing with the stated intent to reside permanently in a foreign country, taken on board: Name, age, and sex; whether married or single; calling or occupation; whether able to read or write; nationality; country of birth; country of which citizen or subject; race; last permanent residence in the United States or insular possessions thereof; if a citizen of the United States or of the insular possessions thereof, whether native born or naturalized; if native born, the place and date of birth, or if naturalized the city or town in which naturalization has been had; intended future permanent residence; and time and port of last arrival in the United States, or insular possessions thereof; and such master or commanding officer shall also furnish information in relation to the sex, age, class of travel, and port of debarkation of the United States citizens departing who do not intend to reside permanently in a foreign country, and no master of any such vessel shall be granted clearance papers for his vessel until he has deposited such list or lists with the immigration officials at the port of departure and made oath that they are full and complete as to the name and other information herein required concerning each person of the classes specified taken on board his vessel; and any neglect or omission to comply with the requirements of this section shall be punishable as provided in section fourteen of this Act: *Provided*, That in the case of vessels making regular trips to ports of the United States the Commissioner General of Immigration, with the approval of the Secretary of Labor, may, when expedient, arrange for the delivery of such lists of outgoing aliens at a later date: *Provided further*, That it shall be the duty of immigration officials to record the following information regarding every resident alien and citizen leaving the United States by way of the Canadian or Mexican borders for permanent residence in a foreign country: Name, age, and sex; whether married or single; calling or occupation; whether able to read or write; nationality; country of birth; country of which citizen or subject; race; last permanent residence in the United States; intended future permanent residence; and time and port of last arrival in the United States; and if a United States citizen, whether native born or naturalized. [39 Stat. L. 882.]

SEC. 13. [Listing of aliens — manifests — verification.] That all aliens arriving by water at the ports of the United States shall be listed in convenient groups, the names of those coming from the same locality to be assembled so far as practicable, and no one list or manifest shall contain more than thirty names. To each alien or head of a family shall be given a ticket on which shall be written his name, a number or letter designating the list in which his name, and other items of information required by this Act, are contained, and his number on said list, for convenience of identification on arrival. Each list or manifest shall be verified by the signature and the oath or affirmation of the master or commanding officer, or the first or second below him in command, taken before an immigration officer at the port of arrival, to the effect that he has caused the surgeon of said vessel sailing therewith to make a physical and mental examination of each of said aliens, and that from the report of said surgeon and from his own investigation he believes that no one of said aliens is of any of the

classes excluded from admission into the United States by section three of this Act, and that also according to the best of his knowledge and belief the information in said lists or manifests concerning each of said aliens named therein is correct and true in every respect. That the surgeon of said vessel sailing therewith shall also sign each of said lists or manifests and make oath or affirmation in like manner before an immigration officer at the port of arrival, stating his professional experience and qualifications as a physician and surgeon, and that he has made a personal examination of each of the said aliens named therein, and that the said list or manifest, according to the best of his knowledge and belief, is full, correct, and true in all particulars relative to the mental and physical condition of said aliens. If no surgeon sails with any vessel bringing aliens, the mental and physical examinations and the verifications of the lists or manifests shall be made by some competent surgeon employed by the owners of the said vessels, and the manifests shall be verified by such surgeon before a United States consular officer or other officer authorized to administer oaths: *Provided*, That if any changes in the condition of such aliens occur or develop during the voyage of the vessel on which they are traveling, such changes shall be noted on the manifest before the verification thereof. [39 Stat. L. 884].

SEC. 14. [**Failure to deliver manifests, etc.—penalty—refusal of clearance.**] That it shall be unlawful for the master or commanding officer of any vessel bringing aliens into or carrying aliens out of the United States to refuse or fail to deliver to the immigration officials the accurate and full manifests or statements or information regarding all aliens on board or taken on board such vessel required by this Act, and if it shall appear to the satisfaction of the Secretary of Labor that there has been such a refusal or failure, or that the lists delivered are not accurate and full, such master or commanding officer shall pay to the collector of customs at the port of arrival or departure the sum of \$10 for each alien concerning whom such accurate and full manifest or statement or information is not furnished, or concerning whom the manifest or statement or information is not prepared and sworn to as prescribed by this Act. No vessel shall be granted clearance pending the determination of the question of the liability to the payment of such fine, or while it remains unpaid, nor shall such fine be remitted or refunded: *Provided*, That clearance may be granted prior to the determination of such question upon the deposit with the collector of customs of a sum sufficient to cover such fine. [39 Stat. L. 884.]

SEC. 15. [**Examination of aliens on arrival—duties of immigration officers—removal from vessels.**] That upon the arrival at a port of the United States of any vessel bringing aliens it shall be the duty of the proper immigration officials to go or to send competent assistants to the vessel and there inspect all such aliens, or said immigration officials may order a temporary removal of such aliens for examination at a designated time and place, but such temporary removal shall not be considered a landing, nor shall it relieve vessels, the transportation lines, masters, agents, owners or consignees of the vessel upon which said aliens are brought to any port of the United States from any of the obligations which, in case:

such aliens remain on board, would under the provisions of this Act bind the said vessels, transportation lines, masters, agents, owners, or consignees: *Provided*, That where removal is made to premises owned or controlled by the United States, said vessels, transportation lines, masters, agents, owners, or consignees, and each of them, shall, so long as detention there lasts, be relieved of responsibility for the safekeeping of such aliens. Whenever a temporary removal of aliens is made the vessels or transportation lines which brought them and the masters, owners, agents, and consignees of the vessel upon which they arrive shall pay all expenses of such removal and all expenses arising during subsequent detention, pending decision on the aliens' eligibility to enter the United States and until they are either allowed to land or returned to the care of the line or to the vessel which brought them, such expenses to include those of maintenance, medical treatment in hospital or elsewhere, burial in the event of death, and transfer to the vessel in the event of deportation, excepting only where they arise under the terms of any of the provisos of section eighteen hereof. Any refusal or failure to comply with the provisions hereof shall be punished in the manner specified in section eighteen of this Act. [39 Stat. L. 885.]

SEC. 16. [Examination of aliens — by whom made — procedure — evidence — witnesses.] That the physical and mental examination of all arriving aliens shall be made by medical officers of the United States Public Health Service who shall have had at least two years' experience in the practice of their profession since receiving the degree of doctor of medicine, and who shall conduct all medical examinations and shall certify, for the information of the immigration officers and the boards of special inquiry hereinafter provided for, any and all physical and mental defects or diseases observed by said medical officers in any such alien; or, should medical officers of the United States Public Health Service be not available, civil surgeons of not less than four years' professional experience may be employed in such emergency for such service upon such terms as may be prescribed by the Commissioner General of Immigration, under the direction or with the approval of the Secretary of Labor. All aliens arriving at ports of the United States shall be examined by not less than two such medical officers at the discretion of the Secretary of Labor, and under such administrative regulations as he may prescribe and under medical regulations prepared by the Surgeon General of the United States Public Health Service. Medical officers of the United States Public Health Service who have had especial training in the diagnosis of insanity and mental defects shall be detailed for duty or employed at all ports of entry designated by the Secretary of Labor, and such medical officers shall be provided with suitable facilities for the detention and examination of all arriving aliens in whom insanity or mental defect is suspected, and the services of interpreters shall be provided for such examination. Any alien certified for insanity or mental defect may appeal to the board of medical officers of the United States Public Health Service, which shall be convened by the Surgeon General of the United States Public Health Service, and said alien may introduce before such board one expert medical witness at his own cost and expense. That the inspection, other than the physical and mental

examination, of aliens, including those seeking admission or readmission to or the privilege of passing through or residing in the United States, and the examination of aliens arrested within the United States under this Act, shall be conducted by immigrant inspectors, except as hereinafter provided in regard to boards of special inquiry. All aliens arriving at ports of the United States shall be examined by at least two immigrant inspectors at the discretion of the Secretary of Labor and under such regulations as he may prescribe. Immigrant inspectors are hereby authorized and empowered to board and search for aliens any vessel, railway car, or any other conveyance, or vehicle in which they believe aliens are being brought into the United States. Said inspectors shall have power to administer oaths and to take and consider evidence touching the right of any alien to enter, reenter, pass through, or reside in the United States, and, where such action may be necessary, to make a written record of such evidence; and any person to whom such an oath has been administered, under the provisions of this Act, who shall knowingly or willfully give false evidence or swear to any false statement in any way affecting or in relation to the right of any alien to admission, or readmission to, or to pass through, or to reside in the United States shall be deemed guilty of perjury and be punished as provided by section one hundred and twenty-five of the Act approved March fourth, nineteen hundred and nine, entitled "An Act to codify, revise, and amend the penal laws of the United States." All aliens coming to the United States shall be required to state under oath the purposes for which they come, the length of time they intend to remain in the United States, whether or not they intend to abide in the United States permanently and become citizens thereof, and such other items of information regarding themselves as will aid the immigration officials in determining whether they belong to any of the excluded classes enumerated in section three hereof. Any commissioner of immigration or inspector in charge shall also have power to require by subpoena the attendance and testimony of witnesses before said inspectors and the production of books, papers, and documents touching the right of any alien to enter, reenter, reside in, or pass through the United States, and to that end may invoke the aid of any court of the United States; and any district court within the jurisdiction of which investigations are being conducted by an immigrant inspector may, in the event of neglect or refusal to respond to a subpoena issued by any commissioner of immigration or inspector in charge or refusal to testify before said immigrant inspector, issue an order requiring such person to appear before said immigrant inspector, produce books, papers, and documents if demanded, and testify; and any failure to obey such order of the court may be punished by the court as a contempt thereof. That any person, including employees, officials, or agents of transportation companies, who shall assault, resist, prevent, impede, or interfere with any immigration official or employee in the performance of his duty under this Act shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by imprisonment for a term of not more than one year, or by a fine of not more than \$2,000, or both; and any person who shall use any deadly or dangerous weapon in resisting any immigration official or employee in the performance of his duty shall be deemed guilty of a felony and shall, on conviction thereof,

be punished by imprisonment for not more than ten years. Every alien who may not appear to the examining immigrant inspector at the port of arrival to be clearly and beyond a doubt entitled to land shall be detained for examination in relation thereto by a board of special inquiry. In the event of rejection by the board of special inquiry, in all cases where an appeal to the Secretary of Labor is permitted by this Act, the alien shall be so informed and shall have the right to be represented by counsel or other adviser on such appeal. The decision of an immigrant inspector, if favorable to the admission of any alien, shall be subject to challenge by any other immigrant inspector, and such challenge shall operate to take the alien whose right to land is so challenged before a board of special inquiry for its investigation. [39 Stat. L. 885.]

For Penal Laws, § 125, mentioned in this section, see 1909 Supp. Fed. Stat. Ann. 437; 7 Fed. Stat. Ann. (2d ed.) 670.

SEC. 17. [Boards of special inquiry — appointment — duties — records — decision.] That boards of special inquiry shall be appointed by the commissioner of immigration or inspector in charge at the various ports of arrival as may be necessary for the prompt determination of all cases of immigrants detained at such ports under the provisions of the law. Each board shall consist of three members, who shall be selected from such of the immigrant officials in the service as the Commissioner General of Immigration, with the approval of the Secretary of Labor, shall from time to time designate as qualified to serve on such boards. When in the opinion of the Secretary of Labor the maintenance of a permanent board of special inquiry for service at any sea or land border port is not warranted, regularly constituted boards may be detailed from other stations for temporary service at such port, or, if that be impracticable, the Secretary of Labor shall authorize the creation of boards of special inquiry by the immigration officials in charge at such ports, and shall determine what Government officials or other persons shall be eligible for service on such boards. Such boards shall have authority to determine whether an alien who has been duly held shall be allowed to land or shall be deported. All hearings before such boards shall be separate and apart from the public, but the immigrant may have one friend or relative present under such regulations as may be prescribed by the Secretary of Labor. Such boards shall keep a complete permanent record of their proceedings and of all such testimony as may be produced before them; and the decisions of any two members of the board shall prevail, but either the alien or any dissenting member of the said board may appeal through the commissioner of immigration at the port of arrival and the Commissioner General of Immigration to the Secretary of Labor, and the taking of such appeal shall operate to stay any action in regard to the final disposal of any alien whose case is so appealed until the receipt by the commissioner of immigration at the port of arrival of such decision which shall be rendered solely upon the evidence adduced before the board of special inquiry. In every case where an alien is excluded from admission into the United States, under any law or treaty now existing or hereafter made, the decision of a board of special inquiry adverse to the admission of such alien shall be final, unless reversed on appeal to the Secretary of Labor; *Provided, That*

the decision of a board of special inquiry shall be based upon the certificate of the examining medical officer, and, except as provided in section twenty-one hereof, shall be final as to the rejection of aliens affected with tuberculosis in any form or with a loathsome or dangerous contagious disease, or with any mental or physical disability which would bring such aliens within any of the classes excluded from admission to the United States under section three of this Act. [37 Stat. L. 887.]

SEC. 18. [Deportation of aliens — duty of master, etc., of vessels — violations — penalties.] That all aliens brought to this country in violation of law shall be immediately sent back, in accommodations of the same class in which they arrived, to the country whence they respectively came, on the vessels bringing them, unless in the opinion of the Secretary of Labor immediate deportation is not practicable or proper. The cost of their maintenance while on land, as well as the expense of the return of such aliens, shall be borne by the owner or owners of the vessels on which they respectively came. That it shall be unlawful for any master, purser, person in charge, agent, owner, or consignee of any such vessel to refuse to receive back on board thereof, or on board of any other vessel owned or operated by the same interests, such aliens; or to fail to detain them thereon; or to refuse or fail to return them in the manner aforesaid to the foreign port from which they came; or to fail to pay the cost of their maintenance while on land; or to make any charge for the return of any such alien, or to take any security for the payment of such charge; or to take any consideration to be returned in case the alien is landed; or knowingly to bring to the United States at any time within one year from the date of deportation any alien rejected or arrested and deported under any provision of this Act, unless prior to reembarkation the Secretary of Labor has consented that such alien shall reapply for admission, as required by section three hereof; and if it shall appear to the satisfaction of the Secretary of Labor that such master, purser, person in charge, agent, owner, or consignee has violated any of the foregoing provisions, or any of the provisions of section fifteen hereof, such master, purser, person in charge, agent, owner, or consignee shall pay to the collector of customs of the district in which the port of arrival is located, or in which any vessel of the line may be found, the sum of \$300 for each and every violation of any provision of said sections; and no vessel shall have clearance from any port of the United States while any such fine is unpaid, nor shall such fine be remitted or refunded: *Provided*, That clearance may be granted prior to the determination of such question upon the deposit with the collector of customs of a sum sufficient to cover such fine. If the vessel by which any alien ordered deported came has left the United States and it is impracticable for any reason to deport the alien within a reasonable time by another vessel owned by the same interests, the cost of deportation may be paid by the Government and recovered by civil suit from any agent, owner, or consignee of the vessel: *Provided further*, That the Commissioner General of Immigration, with the approval of the Secretary of Labor, may suspend, upon conditions to be prescribed by the Commissioner General of Immigration, the deportation of any aliens found to have come in violation of any provision of this Act if, in his judgment, the testimony

of such alien is necessary on behalf of the United States Government in the prosecution of offenders against any provision of this Act or other laws of the United States; and the cost of maintenance of any person so detained resulting from such suspension of deportation, and a witness fee in the sum of \$1 per day for each day such person is so detained, may be paid from the appropriation for the enforcement of this Act, or such alien may be released under bond, in the penalty of not less than \$500, with security approved by the Secretary of Labor, conditioned that such alien shall be produced when required as a witness and for deportation. No alien certified, as provided in section sixteen of this Act, to be suffering from tuberculosis in any form, or from a loathsome or dangerous contagious disease other than one of quarantinable nature, shall be permitted to land for medical treatment thereof in any hospital in the United States, unless the Secretary of Labor is satisfied that to refuse treatment would be inhumane or cause unusual hardship or suffering, in which case the alien shall be treated in the hospital under the supervision of the immigration officials at the expense of the vessel transporting him: *Provided further*, That upon the certificate of an examining medical officer to the effect that the health or safety of an insane alien would be unduly imperiled by immediate deportation, such alien may, at the expense of the appropriation for the enforcement of this Act, be held for treatment until such time as such alien may, in the opinion of such medical officer, be safely deported: *Provided further*, That upon the certificate of an examining medical officer to the effect that a rejected alien is helpless from sickness, mental or physical disability, or infancy, if such alien is accompanied by another alien whose protection or guardianship is required by such rejected alien, such accompanying alien may also be excluded, and the master, agent, owner, or consignee of the vessel in which such alien and accompanying alien are brought shall be required to return said alien and accompanying alien in the same manner as vessels are required to return other rejected aliens. [39 Stat. L. 887.]

SEC. 19. [Deportation of aliens — time — classes deported.] That at any time within five years after entry, any alien who at the time of entry was a member of one or more of the classes excluded by law; any alien who shall have entered or who shall be found in the United States in violation of this Act, or in violation of any other law of the United States; any alien who at any time after entry shall be found advocating or teaching the unlawful destruction of property, or advocating or teaching anarchy, or the overthrow by force or violence of the Government of the United States or of all forms of law or the assassination of public officials; any alien who within five years after entry becomes a public charge from causes not affirmatively shown to have arisen subsequent to landing; except as hereinafter provided, any alien who is hereafter sentenced to imprisonment for a term of one year or more because of conviction in this country of a crime involving moral turpitude, committed within five years after the entry of the alien to the United States, or who is hereafter sentenced more than once to such a term of imprisonment because of conviction in this country of any crime involving moral turpitude, committed at any time after entry; any alien who shall be found an inmate of or connected with

the management of a house of prostitution or practicing prostitution after such alien shall have entered the United States, or who shall receive, share in, or derive benefit from any part of the earnings of any prostitute; any alien who manages or is employed by, in, or in connection with any house of prostitution or music or dance hall or other place of amusement or resort habitually frequented by prostitutes, or where prostitutes gather, or who in any way assists any prostitute or protects or promises to protect from arrest any prostitute; any alien who shall import or attempt to import any person for the purpose of prostitution or for any other immoral purpose; any alien who, after being excluded and deported or arrested and deported as a prostitute, or as a procurer, or as having been connected with the business of prostitution or importation for prostitution or other immoral purposes in any of the ways hereinbefore specified, shall return to and enter the United States; any alien convicted and imprisoned for a violation of any of the provisions of section four hereof; any alien who was convicted, or who admits the commission, prior to entry, of a felony or other crime or misdemeanor involving moral turpitude; at any time within three years after entry, any alien who shall have entered the United States by water at any time or place other than as designated by immigration officials, or by land at any place other than one designated as a port of entry for aliens by the Commissioner General of Immigration, or at any time not designated by immigration officials, or who enters without inspection, shall, upon the warrant of the Secretary of Labor, be taken into custody and deported: *Provided*, That the marriage to an American citizen of a female of the sexually immoral classes the exclusion or deportation of which is prescribed by this Act shall not invest such female with United States citizenship if the marriage of such alien female shall be solemnized after her arrest or after the commission of acts which make her liable to deportation under this Act: *Provided further*, That the provision of this section respecting the deportation of aliens convicted of a crime involving moral turpitude shall not apply to one who has been pardoned, nor shall such deportation be made or directed if the court, or judge thereof, sentencing such alien for such crime shall, at the time of imposing judgment or passing sentence or within thirty days thereafter, due notice having first been given to representatives of the State, make a recommendation to the Secretary of Labor that such alien shall not be deported in pursuance of this Act; nor shall any alien convicted as aforesaid be deported until after the termination of his imprisonment: *Provided further*, That the provisions of this section, with the exceptions hereinbefore noted, shall be applicable to the classes of aliens therein mentioned irrespective of the time of their entry into the United States: *Provided further*, That the provisions of this section shall also apply to the cases of aliens who come to the mainland of the United States from the insular possessions thereof: *Provided further*, That any person who shall be arrested under the provisions of this section, on the ground that he has entered or been found in the United States in violation of any other law thereof which imposes on such person the burden of proving his right to enter or remain, and who shall fail to establish the existence of the right claimed, shall be deported to the place specified in such other law. In every case where any person is ordered deported from the United States under the provisions

of this Act, or of any law or treaty, the decision of the Secretary of Labor shall be final. [39 Stat. L. 889.]

SEC. 20. [Deportation of aliens — place — expense — procedure — masters, etc., of vessels — punishment.] That the deportation of aliens provided for in this Act shall, at the option of the Secretary of Labor, be to the country whence they came or to the foreign port at which such aliens embarked for the United States; or, if such embarkation was for foreign contiguous territory, to the foreign port at which they embarked for such territory; or, if such aliens entered foreign contiguous territory from the United States and later entered the United States, or if such aliens are held by the country from which they entered the United States not to be subjects or citizens of such country, and such country refuses to permit their reentry, or imposes any condition upon permitting reentry, then to the country of which such aliens are subjects or citizens, or to the country in which they resided prior to entering the country from which they entered the United States. If deportation proceedings are instituted at any time within five years after the entry of the alien, such deportation, including one-half of the entire cost of removal to the port of deportation, shall be at the expense of the contractor, procurer, or other person by whom the alien was unlawfully induced to enter the United States, or, if that can not be done, then the cost of removal to the port of deportation shall be at the expense of the appropriation for the enforcement of this Act, and the deportation from such port shall be at the expense of the owner or owners of such vessels or transportation line by which such aliens respectively came, or, if that is not practicable, at the expense of the appropriation for the enforcement of this Act. If deportation proceedings are instituted later than five years after the entry of the alien, or, if the deportation is made by reason of causes arising subsequent to entry, the cost thereof shall be payable from the appropriation for the enforcement of this Act. A failure or refusal on the part of the masters, agents, owners, or consignees of vessels to comply with the order of the Secretary of Labor to take on board, guard safely, and transport to the destination specified any alien ordered to be deported under the provisions of this Act shall be punished by the imposition of the penalties prescribed in section eighteen of this Act: *Provided*, That when in the opinion of the Secretary of Labor the mental or physical condition of such alien is such as to require personal care and attendance, the said Secretary shall when necessary employ a suitable person for that purpose, who shall accompany such alien to his or her final destination, and the expense incident to such service shall be defrayed in the same manner as the expense of deporting the accompanied alien is defrayed. Pending the final disposal of the case of any alien so taken into custody, he may be released under a bond in the penalty of not less than \$500 with security approved by the Secretary of Labor, conditioned that such alien shall be produced when required for a hearing or hearings in regard to the charge upon which he has been taken into custody, and for deportation if he shall be found to be unlawfully within the United States. [20 Stat. L. 890.]

SEC. 21. [Conditional admission of alien — bond or deposit.] That any alien liable to be excluded because likely to become a public charge or

because of physical disability other than tuberculosis in any form or a loathsome or dangerous contagious disease may, if otherwise admissible, nevertheless be admitted in the discretion of the Secretary of Labor upon the giving of a suitable and proper bond or undertaking, approved by said Secretary, in such amount and containing such conditions as he may prescribe, to the United States and to all States, Territories, counties, towns, municipalities, and districts thereof, holding the United States and all States, Territories, counties, towns, municipalities, and districts thereof harmless against such alien becoming a public charge. In lieu of such bond, such alien may deposit in cash with the Secretary of Labor such amount as the Secretary of Labor may require, which amount shall be deposited by said Secretary in the United States Postal Savings Bank, a receipt therefor to be given the person furnishing said sum, showing the fact and object of its receipt and such other information as said Secretary may deem advisable. All accruing interest on said deposit during the time same shall be held in the United States Postal Savings Bank shall be paid to the person furnishing the sum for deposit. In the event of such alien becoming a public charge, the Secretary of Labor shall dispose of said deposit in the same manner as if same had been collected under a bond as provided in this section. In the event of the permanent departure from the United States, the naturalization, or the death of such alien, the said sum shall be returned to the person by whom furnished, or to his legal representatives. The admission of such alien shall be a consideration for the giving of such bond, undertaking, or cash deposit. Suit may be brought thereon in the name and by the proper law officers either of the United States Government or of any State, Territory, District, county, town, or municipality in which such alien becomes a public charge. [39 Stat. L. 891.]

SEC. 22. [Families of resident alien — admission.] That whenever an alien shall have been naturalized or shall have taken up his permanent residence in this country, and thereafter shall send for his wife or minor children to join him, and said wife or any of said minor children shall be found to be affected with any contagious disorder, such wife or minor children shall be held, under such regulations as the Secretary of Labor shall prescribe, until it shall be determined whether the disorder will be easily curable or whether they can be permitted to land without danger to other persons; and they shall not be either admitted or deported until such facts have been ascertained; and if it shall be determined that the disorder is easily curable and the husband or father or other responsible person is willing to bear the expense of the treatment, they may be accorded treatment in hospital until cured and then be admitted, or if it shall be determined that they can be permitted to land without danger to other persons, they may, if otherwise admissible, thereupon be admitted: *Provided*, That if the person sending for wife or minor children is naturalized, a wife to whom married or a minor child born subsequent to such husband or father's naturalization shall be admitted without detention for treatment in hospital, and with respect to a wife to whom married or a minor child born prior to such husband or father's naturalization the provisions of this section shall be observed, even though such person is unable to pay

the expense of treatment, in which case the expense shall be paid from the appropriation for the enforcement of this Act. [39 Stat. L. 891.]

SEC. 23. [Commissioner General of Immigration — duties — aliens from foreign contiguous territory.] That the Commissioner General of Immigration shall perform all his duties under the direction of the Secretary of Labor. Under such direction he shall have charge of the administration of all laws relating to the immigration of aliens into the United States, and shall have the control, direction, and supervision of all officers, clerks, and employees appointed thereunder; he shall establish such rules and regulations, prescribe such forms of bond, reports, entries, and other papers, and shall issue from time to time such instructions not inconsistent with law, as he shall deem best calculated for carrying out the provisions of this Act and for protecting the United States and aliens migrating thereto from fraud and loss, and shall have authority to enter into contract for the support and relief of such aliens as may fall into distress or need public aid, and to remove to their native country, at any time within three years after entry, at the expense of the appropriations for the enforcement of this Act, such as fall into distress or need public aid from causes arising subsequent to their entry and are desirous of being so removed; he shall prescribe rules for the entry and inspection of aliens coming to the United States from or through Canada and Mexico, so as not unnecessarily to delay, impede, or annoy persons in ordinary travel between the United States and said countries, and shall have power to enter into contracts with transportation lines for the said purpose. It shall be the duty of the Commissioner General of Immigration to detail officers of the Immigration Service from time to time as may be necessary, in his judgment, to secure information as to the number of aliens detained in the penal, reformatory, and charitable institutions (public and private) of the several States and Territories, the District of Columbia, and other territory of the United States, and to inform the officers of such institutions of the provisions of law in relation to the deportation of aliens who have become public charges. He may, with the approval of the Secretary of Labor, whenever in his judgment such action may be necessary to accomplish the purposes of this Act, detail immigration officers for service in foreign countries; and, upon his request, approved by the Secretary of Labor, the Secretary of the Treasury may detail medical officers of the United States Public Health Service for the performance of duties in foreign countries in connection with the enforcement of this Act. The duties of commissioners of immigration and other immigration officials in charge of districts, ports, or stations shall be of an administrative character, to be prescribed in detail by regulations prepared under the direction or with the approval of the Secretary of Labor: *Provided*, That no person, company, or transportation line engaged in carrying alien passengers for hire from Canada or Mexico to the United States, whether by land or water, shall be allowed to land any such passengers in the United States without providing suitable and approved landing stations, conveniently located, at the point or points of entry. The Commissioner General of Immigration is hereby authorized and empowered to prescribe the conditions, not inconsistent with law, under which the above-mentioned landing stations shall be deemed suitable

within the meaning of this section. Any person, company, or transportation line landing an alien passenger in the United States without compliance with the requirement herein set forth shall be deemed to have violated section eight of this Act, and upon conviction shall be subject to the penalty therein prescribed: *Provided further*, That for the purpose of making effective the provisions of this section relating to the protection of aliens from fraud and loss, and also the provisions of section thirty of this Act, relating to the distribution of aliens, the Secretary of Labor shall establish and maintain immigrant stations at such interior places as may be necessary, and, in the discretion of the said Secretary, aliens in transit from ports of landing to such interior stations shall be accompanied by immigrant inspectors: *Provided further*, That in prescribing rules and making contracts for the entry and inspection of aliens applying for admission from or through foreign contiguous territory, due care shall be exercised to avoid any discriminatory action in favor of foreign transportation companies transporting to such territory aliens destined to the United States, and all such transportation companies shall be required, as a condition precedent to the inspection or examination under such rules and contracts at the ports of such contiguous territory of aliens brought thereto by them, to submit to and comply with all the requirements of this Act which would apply were they bringing such aliens directly to seaports of the United States, and, from and after the taking effect of this Act, no alien applying for admission from foreign contiguous territory shall be permitted to enter the United States unless upon proving that he was brought to such territory by a transportation company which had submitted to and complied with all the requirements of this Act, or that he entered, or has resided in, such territory more than two years prior to the date of his application for admission to the United States. [39 Stat. L. 893.]

SEC. 24. [Immigration inspectors, officers, etc.—appointment — compensation.] That immigrant inspectors and other immigration officers, clerks, and employees shall hereafter be appointed and their compensation fixed and raised or decreased from time to time by the Secretary of Labor, upon the recommendation of the Commissioner General of Immigration and in accordance with the provisions of the civil-service Act of January sixteenth, eighteen hundred and eighty-three: *Provided*, That said Secretary, in the enforcement of that portion of this Act which excludes contract laborers and induced and assisted immigrants, may employ, for such purposes and for detail upon additional service under this Act when not so engaged, without reference to the provisions of the said civil-service Act, or to the various Acts relative to the compilation of the Official Register, such persons as he may deem advisable and from time to time fix, raise, or decrease their compensation. He may draw annually from the appropriation for the enforcement of this Act \$110,000, or as much thereof as may be necessary, to be expended for the salaries and expenses of persons so employed and for expenses incident to such employment; and the accounting officers of the Treasury shall pass to the credit of the proper disbursing officer expenditures from said sum without itemized account whenever the Secretary of Labor certifies that an itemized account would

not be for the best interests of the Government: *Provided further*, That nothing herein contained shall be construed to alter the mode of appointing commissioners of immigration at the several ports of the United States as provided by the sundry civil appropriation Act approved August eighteenth, eighteen hundred and ninety-four, or the official status of such commissioners heretofore appointed. [39 Stat. L. 893.]

For the Act of Jan. 16, 1883, ch. 27, mentioned in this section, see 1 Fed. Stat. Ann 809; 2 Fed. Stat. Ann. (2d ed.) 155.

For the Act of Aug. 18, 1894, ch. 301, mentioned in this section, see 3 Fed. Stat. Ann. 307; 3 Fed. Stat. Ann. (2d ed.) 629.

SEC. 25. [District courts — jurisdiction of prosecution — discontinuance.] That the district courts of the United States are hereby invested with full jurisdiction of all causes, civil and criminal, arising under any of the provisions of this Act. That it shall be the duty of the United States district attorney of the proper district to prosecute every such suit when brought by the United States under this Act. Such prosecutions or suits may be instituted at any place in the United States at which the violation may occur or at which the person charged with such violation may be found. That no suit or proceeding for a violation of the provisions of this Act shall be settled, compromised, or discontinued without the consent of the court in which it is pending, entered of record, with the reasons therefor. [39 Stat. L. 893.]

SEC. 26. [Immigrant stations — privileges — disposition — intoxicating liquors.] That all exclusive privileges of exchanging money, transporting passengers or baggage, or keeping eating houses, and all other like privileges in connection with any United States immigrant station, shall be disposed of to the lowest responsible and capable bidder, after public competition, notice of such competitive bidding having been made in two newspapers of general circulation for a period of two weeks, subject to such conditions and limitations as the Commissioner General of Immigration, under the direction or with the approval of the Secretary of Labor, may prescribe, and all receipts accruing from the disposal of privileges shall be paid into the Treasury of the United States. No such contract shall be awarded to an alien. No intoxicating liquors shall be sold at any such immigration station. [39 Stat. L. 894.]

SEC. 27. [Immigrant stations — preservation of peace and order — jurisdiction of local courts and officers.] That for the preservation of the peace and in order that arrests may be made for crimes under the laws of the States and Territories of the United States where the various immigrant stations are located, the officers in charge of such stations, as occasion may require, shall admit therein the proper State and municipal officers charged with the enforcement of such laws, and for the purpose of this section the jurisdiction of such officers and of the local courts shall extend over such stations. [39 Stat. L. 894.]

SEC. 28. [Anarchists, etc.— aiding entry — punishment.] That any person who knowingly aids or assists any anarchist or any person who believes

in or advocates the overthrow by force or violence of the Government of the United States, or who disbelieves in or is opposed to organized government, or all forms of law, or who advocates the assassination of public officials, or who is a member of or affiliated with any organization entertaining or teaching disbelief in or opposition to organized government, or who advocates or teaches the duty, necessity, or propriety of the unlawful assaulting or killing of any officer or officers, either of specific individuals or of officers generally, of the Government of the United States or of any other organized government, because of his or their official character, to enter the United States, or who connives or conspires with any person or persons to allow, procure, or permit any such anarchist or person aforesaid to enter therein, shall be deemed guilty of a felony, and on conviction thereof shall be punished by a fine of not more than \$5,000 or by imprisonment for not more than five years, or both.

Any person who knowingly aids or assists any alien who advocates or teaches the unlawful destruction of property to enter the United States shall be deemed guilty of a misdemeanor and on conviction thereof shall be punished by a fine of not more than \$1,000, or by imprisonment for not more than six months, or by both such fine and imprisonment. [39 Stat. L. 894.]

SEC. 29. [International conference for agreements on immigration.] That the President of the United States is authorized, in the name of the Government of the United States, to call, in his discretion, an international conference, to assemble at such point as may be agreed upon, or to send special commissioners to any foreign country, for the purpose of regulating by international agreement, subject to the advice and consent of the Senate of the United States, the immigration of aliens to the United States; of providing for the mental, moral, and physical examination of such aliens by American consuls or other officers of the United States Government at the ports of embarkation, or elsewhere; of securing the assistance of foreign Governments in their own territories to prevent the evasion of the laws of the United States governing immigration to the United States; of entering into such international agreements as may be proper to prevent the immigration of aliens who, under the laws of the United States, are or may be excluded from entering the United States, and of regulating any matters pertaining to such immigration. [39 Stat. L. 894.]

SEC. 30. [Bureau of Immigration — division of information — maintenance — duties.] That there shall be maintained a division of information in the Bureau of Immigration; and the Secretary of Labor shall provide such clerical and other assistance as may be necessary. It shall be the duty of said division to promote a beneficial distribution of aliens admitted into the United States among the several States and Territories desiring immigration. Correspondence shall be had with the proper officials of the States and Territories, and said division shall gather from all available sources useful information regarding the resources, products, and physical characteristics of each State and Territory, and shall publish such information in different languages and distribute the publications among all admitted aliens at the immigrant stations of the United States and to such other

persons as may desire the same. When any State or Territory appoints and maintains an agent or agents to represent it at any of the immigrant stations of the United States, such agents shall, under regulations prescribed by the Commissioner General of Immigration, subject to the approval of the Secretary of Labor, have access to aliens who have been admitted to the United States for the purpose of presenting, either orally or in writing, the special inducements offered by such State or Territory to aliens to settle therein. While on duty at any immigrant station such agents shall be subject to all the regulations prescribed by the Commissioner General of Immigration, who, with the approval of the Secretary of Labor, may, for violation of any such regulations, deny to the agent guilty of such violation any of the privileges herein granted. [39 Stat. L. 895.]

SEC. 31. [Crew of vessel — permitting alien member to land — punishment.] That any person, including the owner, agent, consignee, or master of any vessel arriving in the United States from any foreign port or place, who shall knowingly sign on the ship's articles, or bring to the United States as one of the crew of such vessel, any alien, with intent to permit such alien to land in the United States in violation of the laws and treaties of the United States regulating the immigration of aliens, or who shall falsely and knowingly represent to the immigration authorities at the port of arrival that any such alien is a bona fide member of the crew, shall be liable to a penalty not exceeding \$5,000, for which sum the said vessel shall be liable and may be seized and proceeded against by way of libel in any district court of the United States having jurisdiction of the offense. [39 Stat. L. 895.]

SEC. 32. [Allowing excluded alien to land from vessel — punishment.] That no alien excluded from admission into the United States by any law, convention, or treaty of the United States regulating the immigration of aliens, and employed on board any vessel arriving in the United States from any foreign port or place, shall be permitted to land in the United States, except temporarily for medical treatment, or pursuant to regulations prescribed by the Secretary of Labor providing for the ultimate removal or deportation of such alien from the United States, and the negligent failure of the owner, agent, consignee, or master of such vessel to detain on board any such alien after notice in writing by the immigration officer in charge at the port of arrival, and to deport such alien, if required by such immigration officer or by the Secretary of Labor, shall render such owner, agent, consignee, or master liable to a penalty not exceeding \$1,000, for which sum the said vessel shall be liable, and may be seized and proceeded against by way of libel in any district court of the United States having jurisdiction of the offense. [39 Stat. L. 895.]

SEC. 33. [Crew of vessel — alien members — paying off or discharging.] That it shall be unlawful and be deemed a violation of the preceding section to pay off or discharge any alien employed on board any vessel arriving in the United States from any foreign port or place, unless duly admitted pursuant to the laws and treaties of the United States regulating the immigration of aliens: *Provided*, That in case any such alien intends to reship

on board any other vessel bound to any foreign port or place, he shall be allowed to land for the purpose of so reshipping, under such regulations as the Secretary of Labor may prescribe to prevent aliens not admissible under any law, convention, or treaty from remaining permanently in the United States, and may be paid off, discharged, and permitted to remove his effects, anything in such laws or treaties or in this Act to the contrary notwithstanding, provided due notice of such proposed action be given by the master or the seaman himself to the principal immigration officer in charge at the port of arrival. [39 Stat. L. 896.]

SEC. 34. [**Alien seamen — landing contrary to law — deportation.**] That any alien seaman who shall land in a port of the United States contrary to the provisions of this Act shall be deemed to be unlawfully in the United States, and shall, at any time within three years thereafter, upon the warrant of the Secretary of Labor, be taken into custody and brought before a board of special inquiry for examination as to his qualifications for admission to the United States, and if not admitted said alien seaman shall be deported at the expense of the appropriation for this Act as provided in section twenty of this Act. [39 Stat. L. 896.]

SEC. 35. [**Aliens employed on vessel — freedom from disease, etc. — liability of owner, etc., for shipping afflicted employees.**] That it shall be unlawful for any vessel carrying passengers between a port of the United States and a port of a foreign country, upon arrival in the United States, to have on board employed thereon any alien afflicted with idiocy, imbecility, insanity, epilepsy, tuberculosis in any form, or a loathsome or dangerous contagious disease, if it appears to the satisfaction of the Secretary of Labor, from an examination made by a medical officer of the United States Public Health Service, and is so certified by such officer, that any such alien was so afflicted at the time he was shipped or engaged and taken on board such vessel and that the existence of such affliction might have been detected by means of a competent medical examination at such time; and for every such alien so afflicted on board any such vessel at the time of arrival the owner, agent, consignee, or master thereof shall pay to the collector of customs of the customs district in which the port of arrival is located the sum of \$50, and pending departure of the vessel the alien shall be detained and treated in hospital under supervision of immigration officials at the expense of the vessel; and no vessel shall be granted clearance pending the determination of the question of the liability to the payment of such fine and while it remains unpaid: *Provided*, That clearance may be granted prior to the determination of such question upon the deposit of a sum sufficient to cover such fine: *Provided further*, That such fine may, in the discretion of the Secretary of Labor, be mitigated or remitted. [39 Stat. L. 896.]

SEC. 36. [**Aliens employed on vessel — duty of owner, etc., on arrival — lists and reports.**] That upon arrival of any vessel in the United States from any foreign port or place it shall be the duty of the owner, agent, consignee, or master thereof to deliver to the principal immigration officer in charge of the port of arrival lists containing the names of all aliens

employed on such vessel, stating the positions they respectively hold in the ship's company, when and where they were respectively shipped or engaged, and specifying those to be paid off and discharged in the port of arrival; or lists containing so much of such information as the Secretary of Labor shall by regulation prescribe; and after the arrival of any such vessel it shall be the duty of such owner, agent, consignee, or master to report to such immigration officer, in writing, as soon as discovered, all cases in which any such alien has illegally landed from the vessel, giving a description of such alien, together with any information likely to lead to his apprehension; and before the departure of any such vessel it shall be the duty of such owner, agent, consignee, or master to deliver to such immigration officer a further list containing the names of all alien employees who were not employed thereon at the time of the arrival but who will leave port thereon at the time of her departure, and also the names of those, if any, who have been paid off and discharged, and of those, if any, who have deserted or landed; and in case of the failure of such owner, agent, consignee, or master so to deliver either of the said lists of such aliens arriving and departing, respectively, or so to report such cases of desertion or landing, such owner, agent, consignee, or master shall, if required by the Secretary of Labor, pay to the collector of customs of the customs district in which the port of arrival is located the sum of \$10 for each alien concerning whom correct lists are not delivered or a true report is not made as above required; and no such vessel shall be granted clearance pending the determination of the question of the liability to the payment of such fine, and, in the event such fine is imposed, while it remains unpaid; nor shall such fine be remitted or refunded: *Provided*, That clearance may be granted prior to the determination of such question upon deposit of a sum sufficient to cover such fine. [39 Stat. L. 896.]

SEC. 37. [**"Person" defined — liability of corporation, etc., for act of director, etc.**] That the word "person" as used in this Act shall be construed to import both plural and the singular, as the case may be, and shall include corporations, companies, and associations. When construing and enforcing the provisions of this Act, the act, omission, or failure of any director, officer, agent, or employee of any corporation, company, or association acting within the scope of his employment or office shall in every case be deemed to be the act, omission, or failure of such corporation, company, or association, as well as that of the person acting for or in behalf of such corporation, company, or association. [39 Stat. L. 897.]

SEC. 38. [**Time of taking effect — repeal of existing laws.**] That this Act, except as otherwise provided in section three, shall take effect and be enforced on and after May first, nineteen hundred and seventeen. The Act of March twenty-sixth, nineteen hundred and ten, amending the Act of February twentieth, nineteen hundred and seven, to regulate the immigration of aliens into the United States; the Act of February twentieth, nineteen hundred and seven, to regulate the immigration of aliens into the United States, except section thirty-four thereof; the Act of March third, nineteen hundred and three, to regulate the immigration of aliens into the United States, except section thirty-four thereof; and all other Acts

and parts of Acts inconsistent with this Act are hereby repealed on and after the taking effect of this Act: *Provided*, That this Act shall not be construed to repeal, alter, or amend existing laws relating to the immigration or exclusion of Chinese persons or persons of Chinese descent, except as provided in section nineteen hereof, nor to repeal, alter, or amend section six, chapter four hundred and fifty-three, third session Fifty-eighth Congress, approved February sixth, nineteen hundred and five, nor to repeal, alter, or amend the Act approved August second, eighteen hundred and eighty-two, entitled "An Act to regulate the carriage of passengers by sea," and amendments thereto, except as provided in section eleven hereof: *Provided further*, That nothing contained in this Act shall be construed to affect any prosecution, suit, action, or proceedings brought, or any act, thing, or matter, civil or criminal, done or existing at the time of the taking effect of this Act, except as mentioned in the third proviso of section nineteen hereof; but as to all such prosecutions, suits, actions, proceedings, acts, things, or matters, the laws or parts of laws repealed or amended by this Act are hereby continued in force and effect. [19 Stat. L. 897.]

See the note to section 1 of this Act, *supra*, p. 213.

For the Act of March 3, 1903, ch. 1012, repealed by this section, see 10 Fed. Stat. Ann. 102. This Act had previously been repealed by the Act of Feb. 20, 1907, ch. 1134, likewise repealed by this section. For this last named Act see 1909 Supp. Fed. Stat. Ann. 161; 3 Fed. Stat. Ann. (2d ed.) 637.

For the Act of March 26, 1910, ch. 128, repealed by this section, see 1912 Supp. Fed. Stat. Ann. 89. This Act constituted an amendment of the previously cited Act of Feb. 20, 1907, ch. 1134, §§ 2 and 3, and is incorporated therein in 3 Fed. Stat. Ann. (2d ed.) 640, 649.

For the Act of Feb. 6, 1906, ch. 453, § 6, mentioned in the proviso of this section, see 10 Fed. Stat. Ann. 267; 7 Fed. Stat. Ann. (2d ed.) 1153.

For the Act of Aug. 2, 1882, ch. 374, mentioned in the proviso of this section, see 1 Fed. Stat. Ann. 720; 2 Fed. Stat. Ann. (2d ed.) 5.

[SEC. 1.] * * * [Enforcement of immigration laws — horses and motor vehicles.] That the purchase, use, maintenance, and operation of horses and motor vehicles required in the enforcement of the immigration * * * laws outside of the District of Columbia may be contracted for and the cost thereof paid from the appropriation for the execution of those laws, under such terms and conditions as the Secretary of Labor may prescribe. [— Stat. L. —.]

This is from the Sundry Civil Appropriation Act of July 1, 1918, ch. —.

Joint Resolution Authorizing the readmission to the United States of certain aliens who have been conscripted or have volunteered for service with the military forces of the United States or cobelligerent forces.

[Res. of June 29, 1918, No. —, — Stat. L. —.]

[Classes of aliens excluded — admission after military or naval service with United States or cobelligerents — application — disabilities acquired in service — head tax.] That, notwithstanding the provisions

of section three of the immigration Act of February fifth, nineteen hundred and seventeen, excluding from the United States aliens who are likely to become a public charge, or who are physically defective, or who are contract laborers, or who have come in consequence of advertisements for labor printed, published, or distributed in a foreign country, or who are assisted by others to come, or whose ticket or passage is paid for with the money of another or by any corporation, association, society, municipality, or foreign government, or who are stowaways, or who are illiterate, aliens lawfully resident in the United States when heretofore or hereafter enlisted or conscripted for the military service of the United States; and aliens lawfully resident in the United States who, prior to April sixth, nineteen hundred and seventeen, declared their intention to become citizens of the United States, and who have enlisted for service with Czecko-Slovak, Polish, or other independent forces attached to the United States Army or to the army of any one of the cobelligerents of the United States in the present war, who may, within one year after the termination of the war, apply for readmission to this country, after being honorably discharged or granted furlough abroad by the proper military authorities, or after being rejected on final examination in connection with their enlistment or conscription, shall be readmitted; and that any alien of either of the two foregoing descriptions who would otherwise be excluded under said section of the immigration Act on the ground that he is idiotic, imbecile, feeble-minded, epileptic, insane, or has had one or more attacks of insanity, or on the ground that he is afflicted with constitutional psychopathic inferiority, tuberculosis, a loathsome or dangerous contagious disease, or mental defect, shall be readmitted if it is proved that the disability was acquired while the alien was serving in the military forces of the United States or in an independent force of the kind hereinbefore described, if such alien returns to a port of the United States within one year after the termination of the war; and that the head tax provided in the immigration Act of February fifth, nineteen hundred and seventeen, shall not be collected from aliens readmitted into the United States under the provisions of this resolution. [— *Stat. L.* —.]

The Act of Feb. 5, 1917, ch. 29, § 3, mentioned in the text, is given *supra*, p. 214.

IMPORTS AND EXPORTS

Act of June 15, 1917, ch. —, 243.

Title IV. Interference with Foreign Commerce by Violent Means, 243.

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VI. Seizure of Arms and Other Articles Intended for Export, 243.

Sec. 1. Seizure, When Authorized, 243.

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Title VII. Certain Exports in Time of War Unlawful, 245.

Sec. 1. Authority of President, 245.

2. Violation of Regulations Affecting Exports — Penalty, 246.

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Sec. 1. Export Trade — Promotion — Definition of Words Used in Act, 246.

2. Associations Engaged in Export Trade — Restraint of Trade, 247.

3. Stock or Other Capital of Export Trade Corporation — Acquisition by Any Corporation, 247.

4. Competitors in Export Trade — Unfair Methods, 248.

5. Information Furnished by Export Trade Associations to Federal Trade Commission — Authority of Commission over Association, 248.

CROSS-REFERENCES

Intoxicating Liquors, see **FOOD AND FUEL; INTERNAL REVENUE**.
See generally **UNFAIR COMPETITION**.

TITLE IV.**INTERFERENCE WITH FOREIGN COMMERCE BY VIOLENT MEANS.**

SEC. 1. [Nature of interference — punishment.] Whoever, with intent to prevent, interfere with, or obstruct or attempt to prevent, interfere with, or obstruct the exportation to foreign countries of articles from the United States shall injure or destroy, by fire or explosives, such articles or the places where they may be while in such foreign commerce, shall be fined not more than \$10,000, or imprisoned not more than ten years, or both. [*— Stat. L. —.*]

The foregoing Title IV and the following Titles VI and VII are from an Act of June 15, 1917, ch. —, entitled "An Act To punish acts of interference with the foreign relations, the neutrality, and the foreign commerce of the United States, to punish espionage, and better to enforce the criminal laws of the United States, and for other purposes." Title XIII of this Act contains general provisions applicable alike to these Titles and is given in **CRIMINAL LAW**, *ante*, p. 133.

TITLE VI.**SEIZURE OF ARMS AND OTHER ARTICLES INTENDED FOR EXPORT.**

SEC. 1. [Seizure, when authorized.] Whenever an attempt is made to export or ship from or take out of the United States, any arms or munitions of war, or other articles, in violation of law, or whenever there shall be known or probable cause to believe that any such arms or munitions of war or other article, are being or are intended to be exported, or shipped from, or taken out of the United States, in violation of law, the several collectors, naval officers, surveyors, inspectors of customs, and marshals, and deputy marshals of the United States, and every other person duly authorized for the purpose by the President, may seize and detain any articles or munitions of war about to be exported or shipped from, or taken out of the United States, in violation of law, and the vessels or vehicles containing the same, and retain possession thereof until released or disposed

of as hereinafter directed. If upon due inquiry as hereinafter provided, the property seized shall appear to have been about to be so unlawfully exported, shipped from, or taken out of the United States, the same shall be forfeited to the United States. [— *Stat. L.* —.]

This Title VI, together with the preceding Title IV and the following Title VII, is from an Act of June 15, 1917, ch. —, entitled "An Act to punish acts of interference with the foreign relations, the neutrality, and the foreign commerce of the United States, to punish espionage, and better to enforce the criminal laws of the United States, and for other purposes." Title XIII of this Act contains general provisions applicable alike to all of these Titles and is given in *CRIMINAL LAW*, *ante*, p. 133.

SEC. 2. [Procedure on seizure.] It shall be the duty of the person making any seizure under this title to apply, with due diligence, to the judge of the district court of the United States, or to the judge of the United States district court of the Canal Zone, or to the judge of a court of first instance in the Philippine Islands, having jurisdiction over the place within which the seizure is made, for a warrant to justify the further detention of the property so seized, which warrant shall be granted only on oath or affirmation showing that there is known or probable cause to believe that the property seized being or is intended to be exported or shipped from or taken out of the United States in violation of law; and if the judge refuses to issue the warrant, or application therefor is not made by the person making the seizure within a reasonable time, not exceeding ten days after the seizure, the property shall forthwith be restored to the owner or person from whom seized. If the judge is satisfied that the seizure was justified under the provisions of this title and issues his warrant accordingly, then the property shall be detained by the person seizing it until the President, who is hereby expressly authorized so to do, orders it to be restored to the owner or claimant, or until it is discharged in due course of law on petition of the claimant, or on trial of condemnation proceedings, as hereinafter provided. [— *Stat. L.* —.]

SEC. 3. [Petition for restoration.] The owner or claimant of any property seized under this title may, at any time before condemnation proceedings have been instituted, as hereinafter provided, file his petition for its restoration in the district court of the United States, or the district court of the Canal Zone, or the court of first instance in the Philippine Islands, having jurisdiction over the place in which the seizure was made, whereupon the court shall advance the cause for hearing and determination with all possible dispatch, and, after causing notice to be given to the United States attorney for the district and to the person making the seizure, shall proceed to hear and decide whether the property seized shall be restored to the petitioner or forfeited to the United States. [— *Stat. L.* —.]

SEC. 4. [Libel proceedings — condemnation — sale.] Whenever the person making any seizure under this title applies for and obtains a warrant for the detention of the property, and (a) upon the hearing and determination of the petition of the owner or claimant restoration is denied, or (b) the owner or claimant fails to file a petition for restoration within thirty days after the seizure, the United States attorney for the district wherein it was seized, upon direction of the Attorney General, shall institute libel

proceedings in the United States district court of the district court of the Canal Zone or the the court of first instance of the Philippine Islands having jurisdiction over the place wherein the seizure was made, against the property for condemnation; and if, after trial and hearing of the issues involved, the property is condemned, it shall be disposed of by sale, and the proceeds thereof, less the legal costs and charges, paid into the Treasury [— *Stat. L.* —.]

SEC. 5. [Conformity of proceedings to those in admiralty — restoration of property seized.] The proceedings in such summary trials upon the petition of the owner or claimant of the property seized, as well as in the libel cases herein provided for, shall conform, as near as may be, to the proceedings in admiralty, except that either party may demand trial by jury of any issue of fact joined in such libel cases, and all such proceedings shall be at the suit of and in the name of the United States: *Provided*, That upon the payment of the costs and legal expenses of both the summary trials and the libel proceedings herein provided for, and the execution and delivery of a good and sufficient bond in an amount double the value of the property seized, conditioned that it will not be exported or used or employed contrary to the provisions of this title, the court, in its discretion, may direct that it be delivered to the owners thereof or to the claimants thereof. [— *Stat. L.* —.]

SEC. 6. [Limitation on seizures.] Except in those cases in which the exportation of arms and munitions of war or other articles is forbidden by proclamation or otherwise by the President, as provided in section one of this title, nothing herein contained shall be construed to extend to, or interfere with any trade in such commodities, conducted with any foreign port or place wheresoever or with any other trade which might have been lawfully carried on before the passage of this title, under the law of nations, or under the treaties or conventions entered into by the United States, or under the laws thereof. [— *Stat. L.* —.]

SEC. 7. [Restoration of property seized.] Upon payment of the costs and legal expenses incurred in any such summary trial for possession or libel proceedings, the President is hereby authorized, in his discretion, to order the release and restoration to the owner or claimant, as the case may be, of any property seized or condemned under the provisions of this title. [— *Stat. L.* —.]

SEC. 8. [Enforcement of purposes of title.] The President may employ such part of the land or naval forces of the United States as he may deem necessary to carry out the purposes of this title. [— *Stat. L.* —.]

TITLE VII.

CERTAIN EXPORTS IN TIME OF WAR UNLAWFUL

SEC. 1. [Authority of President.] Whenever during the present war the President shall find that the public safety shall so require, and shall

make proclamation thereof, it shall be unlawful to export from or ship from or take out of the United States to any country named in such proclamation any article or articles mentioned in such proclamation, except at such time or times, and under such regulations and orders, and subject to such limitations and exceptions as the President shall prescribe, until otherwise ordered by the President or by Congress: *Provided, however*, That no preference shall be given to the ports of one State over those of another. [— *Stat. L.* —.]

This Title VII, together with the preceding Titles IV and VI, is from an Act of June 15, 1917, ch. —, entitled "An Act To punish acts of interference with the foreign relations, the neutrality, and the foreign commerce of the United States, to punish espionage, and better to enforce the criminal laws of the United States, and for other purposes." Title XIII of this Act contains general provisions applicable alike to these Titles and is given in *CRIMINAL LAW*, *ante*, p. 133.

SEC. 2. [Violation of regulations affecting exports — penalty.] Any person who shall export, ship, or take out, or deliver or attempt to deliver for export, shipment, or taking out, any article in violation of this title, or of any regulation or order made hereunder, shall be fined not more than \$10,000, or, if a natural person, imprisoned for not more than two years, or both; and any article so delivered or exported, shipped, or taken out, or so attempted to be delivered or exported, shipped, or taken out, shall be seized and forfeited to the United States; and any officer, director, or agent of a corporation who participates in any such violation shall be liable to like fine or imprisonment, or both. [— *Stat. L.* —.]

SEC. 3. [Refusal of clearance of vessel loaded with prohibited articles of export.] Whenever there is reasonable cause to believe that any vessel, domestic or foreign, is about to carry out of the United States any article or articles in violation of the provisions of this title, the collector of customs for the district in which such vessel is located is hereby authorized and empowered, subject to review by the Secretary of Commerce, to refuse clearance to any such vessel, domestic or foreign, for which clearance is required by law, and by formal notice served upon the owners, master, or person or persons in command or charge of any domestic vessel for which clearance is not required by law, to forbid the departure of such vessel from the port, and it shall thereupon be unlawful for such vessel to depart. Whoever, in violation of any of the provisions of this section shall take, or attempt to take, or authorize the taking of any such vessel, out of port or from the jurisdiction of the United States, shall be fined not more than \$10,000 or imprisoned not more than two years, or both; and, in addition, such vessel, her tackle, apparel, furniture, equipment, and her forbidden cargo shall be forfeited to the United States. [— *Stat. L.* —.]

An Act To promote export trade, and for other purposes.

[*Act of April 10, 1918, ch. —, 40 Stat. L. 519*]

[**SEC. 1. [Export trade — promotion — definition of words used in Act.]** That the words "export trade" wherever used in this Act mean solely trade or commerce in goods, wares, or merchandise exported, or in

the course of being exported from the United States or any Territory thereof to any foreign nation; but the words "export trade" shall not be deemed to include the production, manufacture, or selling for consumption or for resale, within the United States or any Territory thereof, of such goods, wares, or merchandise, or any act in the course of such production, manufacture, or selling for consumption or for resale.

That the words "trade within the United States" wherever used in this Act mean trade or commerce among the several States or in any Territory of the United States, or in the District of Columbia, or between any such Territory and another, or between any such Territory or Territories and any State or States or the District of Columbia, or between the District of Columbia and any State or States.

That the word "association" wherever used in this Act means any corporation or combination, by contract or otherwise, of two or more persons, partnerships, or corporations. [— *Stat. L.* —.]

SEC. 2. [Associations engaged in export trade—restraint of trade.] That nothing contained in the Act entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," approved July second, eighteen hundred and ninety, shall be construed as declaring to be illegal an association entered into for the sole purpose of engaging in export trade and actually engaged solely in such export trade, or an agreement made or act done in the course of export trade by such association, provided such association, agreement, or act is not in restraint of trade within the United States, and is not in restraint of the export trade of any domestic competitor of such association: *And provided further*, That such association does not, either in the United States or elsewhere, enter into any agreement, understanding, or conspiracy, or do any act which artificially or intentionally enhances or depresses prices within the United States of commodities of the class exported by such association, or which substantially lessens competition within the United States or otherwise restrains trade therein. [— *Stat. L.* —.]

For the Act of July 2, 1890, ch. 647, see 7 Fed. Stat. Ann. 336; 9 Fed. Stat. Ann. (2d ed.) 644.

SEC. 3. [Stock or other capital of export trade corporation—acquisition by any corporation.] That nothing contained in section seven of the Act entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October fifteenth, nineteen hundred and fourteen, shall be construed to forbid the acquisition or ownership by any corporation of the whole or any part of the stock or other capital of any corporation organized solely for the purpose of engaging in export trade, and actually engaged solely in such export trade, unless the effect of such acquisition or ownership may be to restrain trade or substantially lessen competition within the United States. [— *Stat. L.* —.]

For the Act of Oct. 15, 1914, ch. 323, § 7, see 1916 Supp. Fed. Stat. Ann. 272; 9 Fed. Stat. Ann. (2d ed.) 738.

SEC. 4. [Competitors in export trade — unfair methods.] That the prohibition against “unfair methods of competition” and the remedies provided for enforcing said prohibition contained in the Act entitled “An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes,” approved September twenty-sixth, nineteen hundred and fourteen, shall be construed as extending to unfair methods of competition used in export trade against competitors engaged in export trade, even though the acts constituting such unfair methods are done without the territorial jurisdiction of the United States. [— *Stat. L.* —.]

For Act of Sept. 26, 1914, ch. 311, see 1916 Supp. Fed. Stat. Ann. 112; 4 Fed. Stat. Ann. (2d ed.) 575.

SEC. 5. [Information furnished by export trade associations to Federal Trade Commission — authority of Commission over association.] That every association now engaged solely in export trade, within sixty days after the passage of this Act, and every association entered into hereafter which engages solely in export trade, within thirty days after its creation, shall file with the Federal Trade Commission a verified written statement setting forth the location of its offices or places of business and the names and addresses of all its officers and of all its stockholders or members, and if a corporation, a copy of its certificate or articles of incorporation and by-laws, and if unincorporated, a copy of its articles or contract of association, and on the first day of January of each year thereafter it shall make a like statement of the location of its offices or places of business and the names and addresses of all its officers and of all its stockholders or members and of all amendments to and changes in its articles or certificate of incorporation or in its articles or contract of association. It shall also furnish to the commission such information as the commission may require as to its organization, business, conduct, practices, management, and relation to other associations, corporations, partnerships, and individuals. Any association which shall fail so to do shall not have the benefit of the provisions of section two and section three of this Act, and it shall also forfeit to the United States the sum of \$100 for each and every day of the continuance of such failure, which forfeiture shall be payable into the Treasury of the United States, and shall be recoverable in a civil suit in the name of the United States brought in the district where the association has its principal office, or in any district in which it shall do business. It shall be the duty of the various district attorneys, under the direction of the Attorney General of the United States, to prosecute for the recovery of the forfeiture. The costs and expenses of such prosecution shall be paid out of the appropriation for the expenses of the courts of the United States.

Whenever the Federal Trade Commission shall have reason to believe that an association or any agreement made or act done by such association is in restraint of trade within the United States or in restraint of the export trade of any domestic competitor of such association, or that an association either in the United States or elsewhere has entered into any agreement, understanding, or conspiracy, or done any act which artificially or intentionally enhances or depresses prices within the United States of commodities of the class exported by such association, or which substantially lessens competition within the United States or otherwise restrains trade

therein, it shall summon such association, its officers, and agents to appear before it, and thereafter conduct an investigation into the alleged violations of law. Upon investigation, if it shall conclude that the law has been violated, it may make to such association recommendations for the readjustment of its business, in order that it may thereafter maintain its organization and management and conduct its business in accordance with law. If such association fails to comply with the recommendations of the Federal Trade Commission, said commission shall refer its findings and recommendations to the Attorney General of the United States for such action thereon as he may deem proper.

For the purpose of enforcing these provisions the Federal Trade Commission shall have all the powers, so far as applicable, given it in "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes." [— *Stat. L.* —]

For the Act of Sept. 26, 1914, ch. 311, creating the Federal Trade Commission, see 1916 Supp. Fed. Stat. Ann. 112; 4 Fed. Stat. Ann. (2d ed.) 575.

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[*Act of May 18, 1916, ch. 125, 39 Stat. L. 123.*]

[SEC. 1.] [Intoxicating liquors — regulation — evidence.] * * *

The provisions of sections twenty-one hundred and forty and twenty-one hundred and forty-one of the Revised Statutes of the United States shall also apply to beer and other intoxicating liquors named in the Act of January thirtieth, eighteen hundred and ninety-seven (Twenty-ninth Statutes at Large, page five hundred and six), and the possession by a person of intoxicating liquors in the country where the introduction is prohibited by treaty or Federal statute shall be prima facie evidence of unlawful introduction. [39 Stat. L. 124.]

For R. S. secs. 2140 and 2141, and the Act of Jan. 30, 1897, ch. 109, mentioned in the text, see 3 Fed. Stat. Ann. 384, 385, 386; 3 Fed. Stat. Ann. (2d ed.) 915, 917, 919.

See also the Act of March 2, 1917, ch. 146, § 1, *infra*, p. 260, and the Act of May 25, 1918, ch. —, § 1, *infra*, p. 264.

[Indian supplies — purchases — advertisement — former Act amended.]

* * * That section thirty-seven hundred and nine, Revised Statutes, in so far as that section requires that advertisement be made, shall apply only to those purchases and contracts for supplies or services, except personal services, for the Indian field service which exceed in amount the sum of \$50 each, and section twenty-three of the Act of June twenty-fifth, nineteen hundred and ten (Twenty-sixth Statutes at Large, page eight hundred and sixty-one), is hereby amended accordingly. [39 Stat. L. 126.]

For R. S. sec. 3709, mentioned in the text, see 6 Fed. Stat. Ann. 93; 1912 Supp. Fed. Stat. Ann. 307; 8 Fed. Stat. Ann. (2d ed.) 336.

For the Act of June 25, 1910, ch. 431, § 23, amended by the text, see 1914 Supp. Fed. Stat. Ann. 170; 3 Fed. Stat. Ann. (2d ed.) 791.

[Heirs to Indian property — determination — fee — partition — trusts.]

* * * That hereafter upon a determination of the heirs to any trust or restricted Indian property of the value of \$250 or more, or to any allotment, or after approval by the Secretary of any will covering such trust or restricted property, there shall be paid by such heirs, or by the beneficiaries under such will, or from the estate of the decedent, or from the proceeds of sale of the allotment, or from any trust funds belonging to the estate of the decedent, the sum of \$15, which amount shall be accounted for and paid into the Treasury of the United States and a report shall be made annually to Congress by the Secretary of the Interior, on or before the first Monday of December, of all moneys collected and deposited, as herein provided: *Provided further*, That if the Secretary of the Interior shall find that any inherited trust allotment or allotments are capable of partition to the advantage of the heirs, he may cause such lands to be partitioned among them, regardless of their competency, patents in fee to be issued to the competent heirs for their shares and trust patents to be issued to the incompetent heirs for the lands respectively or jointly set

apart to them, the trust period to terminate in accordance with the terms of the original patent or order of extension of the trust period set out in said patent. [39 Stat. L. 127.]

[Permits to go into Texas — repeal of statute prohibiting.] * * * That so much of section four of the Act of May eleventh, eighteen hundred and eighty (Twenty-first Statutes at Large, page one hundred and thirty-two), as prohibits granting permission in writing or otherwise to any Indian or Indians on any Indian reservation to go into the State of Texas, under any pretext whatever, be, and the same is hereby, repealed. [39 Stat. L. 128.]

For the Act of May 11, 1880, ch. 85, repealed by the text, see 3 Fed. Stat. Ann. 378; 3 Fed. Stat. Ann. (2d ed.) 794 note.

[Arid allotted lands — lease.] * * * That whenever it shall appear to the satisfaction of the Secretary of the Interior that the allotted lands of any Indian are arid but susceptible of irrigation and that the allottee, by reason of old age or other disability, can not personally occupy or improve his allotment or any portion thereof, such lands or such portion thereof, may be leased for a period not exceeding ten years, under such terms, rules, and regulations as may be prescribed by the Secretary of the Interior. [39 Stat. L. 128.]

[Indian tribal funds — allotment and distribution — former Act amended.] That section two of the Act approved March second, nineteen hundred and seven (Thirty-fourth Statutes at Large, page twelve hundred and twenty-one), entitled "An Act providing for the allotment and distribution of Indian tribal funds," be, and the same is hereby, amended so as to read as follows:

"That the pro rata share of any Indian who is mentally or physically incapable of managing his or her own affairs may be withdrawn from the Treasury in the discretion of the Secretary of the Interior and expended for the benefit of such Indian under such rules, regulations, and conditions as the said Secretary may prescribe:" *Provided*, That said funds of any Indian shall not be withdrawn from the Treasury until needed by the Indian and upon his application and when approved by the Secretary of the Interior. [39 Stat. L. 128.]

For the Act of March 2, 1907, ch. 2523, § 2, amended by the text, see 1909 Supp. Fed. Stat. Ann. 228; 3 Fed. Stat. Ann. (2d ed.) 789.

[Bidders for supplies, etc., for Indian Service — certified checks to accompany bids — former Act amended.] Section nine of the Act of March third, eighteen hundred and seventy-five (Eighteenth Statutes at Large, page four hundred and fifty), is hereby amended so as to read as follows:

"That hereafter all bidders under any advertisement published by the Commissioner of Indian Affairs for proposals for goods, supplies, transportation, and so forth, for and on account of the Indian Service, whenever the value of the goods, supplies, and so forth, to be furnished, or the trans-

portation to be performed, shall exceed the sum of \$5,000, shall accompany their bids with a certified check, draft, or cashier's check, payable to the order of the Commissioner of Indian Affairs, upon some United States depository or some one of such solvent national banks as the Secretary of the Interior may designate, or by an acceptable bond in favor of the United States, which check, draft, or bond shall be for five per centum of the amount of the goods, supplies, transportation, and so forth, as aforesaid; and in case any such bidder, on being awarded a contract, shall fail to execute the same with good and sufficient sureties according to the terms on which such bid was made and accepted, such bidder, or the sureties on his bond, shall forfeit the amount so deposited or guaranteed to the United States, and the same shall forthwith be paid into the Treasury of the United States; but if such contract shall be duly executed, as aforesaid, such draft, check, or bond so deposited shall be returned to the bidder." [39 Stat. L. 129.]

For the Act of March 3, 1875, ch. 132, § 9, amended by the text, see 6 Fed. Stat. Ann. 114; 3 Fed. Stat. Ann. (2d ed.) 782.

SEC. 9. [Chippewa Indians — permanent fund advancements — lien.]

* * * That the Secretary of the Interior, under such rules and regulations as he may prescribe, is hereby authorized to advance to any individual Chippewa Indian in the State of Minnesota entitled to participate in the permanent fund of the Chippewa Indians of Minnesota one-fourth of the amount which would now be coming to said Indian under a pro rata distribution of said permanent fund: *Provided*, That the Secretary of the Interior, under such rules and regulations as he may prescribe, may use for or advance to any Chippewa Indian in the State of Minnesota entitled to share in said fund who is incompetent, blind, crippled, decrepit, or helpless from old age, disease, or accident, one-fourth of the amount which would now be coming to said Indian under a pro rata distribution of said permanent fund: *Provided further*, That any money received hereunder by any member of said tribe or used for his or her benefit shall be deducted from the share of said member in the permanent fund of the said Chippewa Indians in Minnesota to which he or she would be entitled: *Provided further*, That the funds hereunder to be paid to Indians shall not be subject to any lien or claim of attorneys or other third parties. [39 Stat. L. 135.]

[Red Lake Indian Forest — creation of forest reserve — allotments — administration.] * * *

To carry into effect the Act entitled "An Act for the relief and civilization of the Chippewa Indians in the State of Minnesota, approved January fourteenth, eighteen hundred and eighty-nine, to provide for the establishment and administration of a forest reserve and for the sale of timber within the Red Lake Indian Reservation, Minnesota," that the following-described lands within the Red Lake Indian Reservation, Minnesota, be, and the same hereby are, created into a forest reserve, to be known as the Red Lake Indian Forest: Townships one hundred and fifty and one hundred and fifty-one north, ranges thirty-two, thirty-three, thirty-four, thirty-five, and thirty-six west, and townships one hundred and fifty-two and one hundred and fifty-three north, ranges thirty-two, thirty-

three, and thirty-four west of the fifth principal meridian, except the lands in townships one hundred and fifty-one north, range thirty-six west, which lie north of the north line of sections twenty-six to thirty, inclusive, and except all lands within sections four, five, six, seven, eight, nine, and eighteen, in township one hundred and fifty-three north, range thirty-four west. The provisions of this paragraph shall not apply to any lands which have heretofore been reserved for school, agency, church, or town-site purposes or granted to private parties or corporations within the area described, nor to the town site of Red Lake, for the creation of which provision is made herein: *Provided*, That when any of said lands are no longer needed for the purpose for which they are reserved, the Secretary of the Interior may declare such lands to be a part of the Red Lake Indian Forest.

That lands within said Red Lake Indian Forest, which are not covered with standing and growing merchantable pine timber and which are suited for the production of agricultural crops and which are fronting upon a lake shore, may be allotted to individual Red Lake Indians: *Provided*, That no such allotment shall exceed eighty acres nor have more than eighty rods fronting upon a lake shore: *Provided further*, That in case an Indian has improved and cultivated more than eighty acres, his allotment may embrace his improvements to the extent of one hundred and sixty acres.

That said forest shall be administered by the Secretary of the Interior in accordance with the principles of scientific forestry, with a view to the production of successive timber crops thereon, and he is hereby authorized to sell and manufacture only such standing and growing pine and oak timber as is mature and has ceased to grow, and he is also authorized to sell and manufacture from [from] time to time such other mature and marketable timber as he may deem advisable, and he is further authorized to construct and operate sawmills for the manufacture of the timber into merchantable products and to employ such persons as he shall find necessary to carry out the purposes of the foregoing provisions, including the establishment of nurseries and the purchase of seeds, seedlings, and transplants when needed for reforestation purposes: *Provided*, That all timber sold under the provisions herein shall be sold on what is known as the bank scale: *Provided further*, That no contract shall be made for the establishment of any mill, or to carry on any logging or lumbering operations which shall constitute a charge upon the proceeds of the timber, until an estimate of the cost thereof shall have first been submitted to and approved by Congress.

That the Secretary of the Interior may issue permits or grant leases on such lands for camping or farming. No permit shall be issued for a longer term than one year and no lease shall be executed for a longer term than five years. Every permit or lease issued under authority of this Act to Indians, or to other persons or corporations, and every patent for an allotment within the limits of the forest created by section one, shall reserve to the United States the right to cross the land covered thereby with logging roads or railroads, to use the shore line, or to erect thereon and use such structures as shall be necessary to the proper and economical management of the Indian Forest created by this Act; and the Secretary of the Interior may reserve from allotment tracts considered necessary for such administration,

After the payment of all expenses connected with the administration of these lands as herein provided, the net proceeds therefrom shall be covered into the Treasury of the United States to the credit of the Red Lake Indians and draw interest at the rate of four per centum per annum. The interest on this fund may be used by the Secretary of the Interior in such manner as he shall consider most advantageous and beneficial to the Red Lake Indians. Expenditure from the principal shall be made only after the approval by Congress of estimates submitted by the said Secretary.

That the Secretary of the Interior shall select and set apart an area not exceeding two hundred acres, in sections twenty, twenty-one, twenty-eight, and twenty-nine, township one hundred and fifty-one north, range thirty-four west, cause the lands thus selected to be surveyed and platted into suitable lots, streets, and alleys, and dedicate said streets and alleys and such lots and parcels as he may consider necessary to public uses. The lands thus selected shall not be allotted, but held as an Indian town site subject to further legislation by Congress.

That the timber on lands of the Red Lake Indian Reservation outside the boundaries of the forest created by this Act may be sold under regulations prescribed by the Secretary of the Interior, and the proceeds administered under the provisions of the general deficiency Act of March third, eighteen hundred and eighty-three (Twenty-second Statutes at Large, page five hundred and ninety), and the Indian appropriation Act of March second, eighteen hundred and eighty-seven (Twenty-fourth Statutes at Large, page four hundred and sixty-three). [39 Stat. L. 137.]

The Act mentioned in the first paragraph of the text is the Act of Jan. 14, 1889, ch. 24, 25 Stat. L. 642.

For the Act of March 3, 1883, ch. 141, mentioned in the last paragraph of the text, see 3 Fed. Stat. Ann. 363; 3 Fed. Stat. Ann. (2d ed.) 785.

For the Act of March 2, 1887, ch. 320, also mentioned in the last paragraph of the text, see 3 Fed. Stat. Ann. 363; 3 Fed. Stat. Ann. (2d ed.) 785 note.

SEC. 11. [Flathead Indian Reservation — homestead entry.] * * *

That lands on the Flathead Indian Reservation in Montana valuable for agricultural or horticultural purposes, heretofore classified as timber lands, may, in the discretion of the Secretary of the Interior, be appraised and opened to homestead entry under regulations prescribed by him, upon condition that homestead entrymen shall at the time of making their original homestead entries pay the full value of the timber found on the land at the time that the appraisement of the land itself is made, such payment to be in addition to the appraised price of the lands apart from the timber. [39 Stat. L. 139.]

SEC. 17. [Fort Berthold Indian Reservation — sale of surplus lands — disposition of proceeds.] * * *

The Secretary of the Interior is hereby authorized to withdraw from the Treasury of the United States, from time to time, in his discretion, all moneys derived from the sale and disposition of surplus lands, within the limits of the former Fort Berthold Indian Reservation, North Dakota, arising under the provisions of the Act approved June first, nineteen hundred and ten (Thirty-sixth Statutes at Large, page four hundred and fifty-five), together with the accrued interest

thereon, and distribute the same per capita to the Indians entitled thereto in the following manner, to wit: To competent Indians in cash share and share alike and to incompetent Indians by depositing equal shares to their individual credit in banks bonded and designated as depositories for individual Indian moneys, subject to expenditure for the benefit of the Indians entitled under such rules as the Secretary of the Interior may prescribe, and hereafter annual distributions shall similarly be made of funds accruing under the provisions of the act herein referred to. [39 Stat. L. 144.]

The Act mentioned in this section is the Act of June 1, 1910, ch. 264, 36 Stat. L. 455.

SEC. 25. [Bad River and Lac du Flambeau Indian Reservations — sale of timber — proceeds — disposition.] * * * That without bias or prejudice to the rights or interests of any party to the litigation now pending, the Secretary of the Interior be, and he hereby is, authorized to sell the timber on the so-called "school lands" and "swamp lands" within the boundaries of the Bad River and Lac du Flambeau Indian Reservations in Wisconsin, and to which the State of Wisconsin has asserted a claim; to keep a separate account of the proceeds of such sale with each legal subdivision of such land and to deposit the said proceeds at interest in a national bank, bonded for the safe-keeping of individual Indian moneys, to be paid over, together with the interest thereon, to the party or parties who shall finally be adjudged to be entitled to such fund: *Provided*, That the consent of the State or parties claiming title therefrom be obtained before any such sale shall be made. [39 Stat. L. 157.]

[Lac Court Oreilles Reservation — flowage rights — lease or grant.] * * * With the consent of the Indians of the Lac Court Oreilles Tribe, to be obtained in such manner as the Secretary of the Interior may require, flowage rights on the unallotted tribal lands, and, with the consent of the allottee or of the heirs of any deceased allottee and under such rules and regulations as the Secretary of the Interior may prescribe, flowage rights on any allotted lands in the Lac Court Oreilles Reservation, in the State of Wisconsin, may be leased or granted for storage-reservoir purposes. The tribe, as a condition to giving its consent to the granting or leasing of flowage rights on tribal lands, and any allottee or the heirs of any deceased allottee, as a condition to giving his or their consent to the leasing or granting of flowage rights on their respective allotments, may determine, subject to the approval of the Secretary of the Interior, what consideration or rental shall be received for such flowage rights, and in what manner and for what purposes such consideration or rental shall be paid or expended; and the consideration or rental shall be paid or expended under such rules and regulations as the Secretary of the Interior may prescribe. [39 Stat. L. 157.]

SEC. 27. [Tribal funds — receipts and expenditures — report to Congress — specific appropriation.] On the first Monday in December, nineteen hundred and seventeen, and annually thereafter, the Secretary of the Treasury shall transmit to the Speaker of the House of Representatives estimates of the amounts of the receipts to, and expenditures which the

Secretary of the Interior recommends to be made for the benefit of the Indians from, all tribal funds of Indians for the ensuing fiscal year; and such statement shall show (first) the total amounts estimated to be received from any and all sources whatsoever, which will be placed to the credit of each tribe of Indians, in trust or otherwise, at the close of the ensuing fiscal year, (second) an analysis showing the amounts which the Federal Government is directed and required by treaty stipulations and agreements to expend from each of said funds or from the Federal Treasury, giving references to the existing treaty or agreement or statute, (third) the amounts which the Secretary of the Interior recommends to be spent from each of the tribal funds held in trust or otherwise, and the purpose for which said amounts are to be expended, and said statement shall show the amounts which he recommends to be disbursed (a) for per capita payments in money to the Indians, (b) for salaries or compensation of officers and employees, (c) for compensation of counsel and attorney fees, and (d) for support and civilization: *Provided*, That thereafter no money shall be expended from Indian tribal funds without specific appropriation by Congress except as follows: Equalization of allotments, education of Indian children in accordance with existing law, per capita and other payments, all of which are hereby continued in full force and effect: *Provided further*, That this shall not change existing law with reference to the Five Civilized Tribes. [39 Stat. L. 158.]

An Act To amend the Act of March twenty-second, nineteen hundred and six, entitled "An Act to authorize the sale and disposition of surplus or unallotted lands of the diminished Colville Indian Reservation, in the State of Washington, and for other purposes."

[Act of Aug. 31, 1916, ch. 424, 39 Stat. L. 672.]

[Colville Indian Reservation, Wash.—sale, etc., of unallotted lands — reservations — introduction of intoxicants — former Act amended.] That section seven of the Act of March twenty-second, nineteen hundred and six (Thirty-fourth Statutes at Large, page eighty), entitled "An Act to authorize the sale and disposition of surplus unallotted lands of the diminished Colville Indian Reservation, in the State of Washington, and for other purposes," be, and the same is hereby, amended to read as provided herein, and that one section, numbered thirteen as hereinafter provided, be, and the same hereby is, added to the said Act.

"SEC. 7. That the Secretary of the Interior may reserve from allotment or other disposition and set apart such lands of the Colville Reservation as in his judgment may be necessary, said lands not to exceed four sections in all, for school, agency, sawmill, gristmill, and other mill or administrative purposes, said lands to remain reserved so long as needed for such respective purposes. And the Secretary of the Interior may also set apart for temporary use and occupancy such lands as he may deem necessary for mission purposes among said Indians, not to exceed in any instance, except as hereinafter specifically provided, forty acres of land lying at any one point, not included in any town site heretofore provided

for, said lands to remain so reserved as long as actually required and used exclusively for mission purposes, subject, however, to such regulations as the said Secretary may deem proper to make: *Provided*, That the Secretary of the Interior is further authorized to issue a patent in fee simple to the properly designated missionary board or corporation which now maintains the Saint Mary's School and Mission for Colville Indians, for the sixty acres of land in township thirty-three north, range twenty-seven east of the Willamette meridian, which is the site of said Saint Mary's School and Mission plant; and in addition thereto the said board or corporation shall have the privilege of using for training purposes and support of said school and mission the lands already formally set apart for such purposes, together with those several tracts selected and used for school or mission purposes which the mission authorities, prior to nineteen hundred and fourteen, described and requested to have set apart, such privilege to continue so long as the lands are required and used exclusively for Indian mission and school purposes. The Secretary of the Interior is further authorized to reserve as an Indian cemetery or cemeteries any lands within said reservation, not to exceed fifty acres in all, and not otherwise formally or officially appropriated, which have heretofore been or are now being used by the Indians for burial purposes.

"SEC. 13. That the lands allotted, those retained or reserved, and the surplus lands sold, set aside for town-site purposes, or granted to the State or otherwise disposed of, shall be subject to the laws of the United States prohibiting the introduction of intoxicants into the Indian country until otherwise provided by Congress." [39 Stat. L. 672.]

For the Act of March 22, 1906, ch. 1126, amended by this Act, see 1909 Supp. Fed. Stat. Ann. 188.

An Act To amend an Act entitled "An Act to provide for the payment of drainage assessments on Indian lands in Oklahoma."

[Act of Aug. 31, 1916, ch. 419, 39 Stat. L. 671.]

[Oklahoma—drainage assessments—payment—former Act amended.]

That an Act entitled "An Act to provide for the payment of drainage assessments on Indian lands in Oklahoma," approved July nineteenth, nineteen hundred and twelve (Thirty-seventh Statutes at Large, page one hundred and ninety-four), be, and the same is hereby, amended so as to confer upon the Secretary of the Interior authority to subject Government lands of the Sac and Fox Indian Agency or the lands of the Sac and Fox Indian School or Agency in the Sac and Fox Agency of Lincoln County, Oklahoma, to all of the provisions touching the organization of drainage districts and the construction of drain ditches and canals across said lands, or assessment for benefits conferred by the construction of said canals or ditches of the Deep Fork drainage district of Lincoln County, Oklahoma, and that the provisions of said Act shall apply in all particulars to the Sac and Fox Indian School lands and the lands of the Sac and Fox Indian Agency of said Lincoln County, Oklahoma. [39 Stat. L. 671.]

For the Act of July 19, 1912, ch. 240, amended by this Act, see 1914 Supp. Fed. Stat. Ann. 168.

An Act Providing that Indian schools may be maintained without restriction as to annual rate of expenditure per pupil.

[*Act of Sept. 7, 1916, ch. 455, 39 Stat. L. 741.*]

[Schools — rate of expenditure per pupil.] That all moneys appropriated or available for Indian school purposes may be expended without restriction as to per capita expenditure for the annual support and education of any one pupil in any Indian school: *Provided*, That in no event shall the per capita cost at any one school exceed the sum of \$200 per annum. [*39 Stat. L. 741.*]

With reference to this Act, the Deficiency Appropriation Act of March 28, 1918, ch. —, § 1, — Stat. L. —, contained a provision as follows:

"That the operation of the Act of September seventh, nineteen hundred and sixteen (Thirty-fifth Statutes at Large, page seven hundred and forty-one), limiting annual expenditures for support and education of pupils in Indian schools to \$200 per capita, is hereby suspended during the fiscal year ending June thirtieth, nineteen hundred and eighteen: *Provided further*, That no part of this sum shall be expended upon improvements or used to increase the compensation of employees."

The reference in the quoted Act to "Thirty-fifth Statutes at Large," etc., is evidently intended for Thirty-ninth Statutes at Large.

An Act To authorize agricultural entries on surplus coal lands in Indian reservations.

[*Act of Feb. 27, 1917, ch. 133, 39 Stat. L. 944.*]

[Sec. 1.] [Indian reservations — surplus coal lands — agricultural entries.] That in any Indian reservation heretofore or hereafter opened to settlement and entry pursuant to a classification of the surplus lands therein as mineral and nonmineral, such surplus lands not otherwise reserved or disposed of, which have been or may be withdrawn or classified as coal lands or are valuable for coal deposits, shall be subject to the same disposition as is or may be prescribed by law for the nonmineral lands in such reservation whenever proper application shall be made with a view of obtaining title to such lands, with a reservation to the United States of the coal deposits therein and of the right to prospect for, mine, and remove the same: *Provided*, That such surplus lands, prior to any disposition hereunder, shall be examined, separated into classes the same as are the nonmineral lands in such reservations, and appraised as to their value, exclusive of the coal deposits therein, under such rules and regulations as shall be prescribed by the Secretary of the Interior for that purpose. [*39 Stat. L. 944.*]

Sec. 2. [Application for entry — contents — patent.] That any applicant for such lands shall state in his application that the same is made in accordance with and subject to the provisions and reservations of this Act, and upon submission of satisfactory proof of full compliance with the provisions of law under which application or entry is made and of this Act shall be entitled to a patent to the lands applied for and entered by him, which patent shall contain a reservation to the United States of all the coal deposits in the lands so patented, together with the right to prospect for, mine, and remove the same. [*39 Stat. L. 945.*]

SEC. 3. [Coal deposits — disposal by United States.] That if the coal-land laws have been or shall be extended over lands applied for, entered, or patented hereunder the coal deposits therein shall be subject to disposal by the United States in accordance with the provisions of the coal-land laws in force at the time of such disposal. Any person qualified to acquire coal deposits or the right to mine and remove the coal under the laws of the United States shall have the right at all times to enter upon the lands applied for, entered, or patented under this Act for the purpose of prospecting for coal thereon, if such coal deposits are then subject to disposition, upon the approval by the Secretary of the Interior of a bond or undertaking to be filed with him as security for the payment of all damages to the crops and improvements on such lands by reason of such prospecting. Any person who has acquired from the United States the coal deposits in any such lands, or the right to mine or remove the same, may reenter and occupy so much of the surface thereof as may be required for all purposes reasonably incident to the mining and removal of the coal therefrom, and mine and remove the coal, upon payment of the damages caused thereby to the owner thereof, or upon giving a good and sufficient bond or undertaking in an action instituted in any competent court to ascertain and fix said damages: *Provided*, That the owner under such limited patent shall have the right to mine coal for personal use upon the land for domestic purposes at any time prior to the disposal by the United States of the coal deposits: *Provided further*, That nothing herein contained shall be held to deny or abridge the right to present and have prompt consideration of applications made under the applicable land laws of the United States for any such surplus lands which have been or may be classified as coal lands with a view of disproving such classification and securing a patent without reservation. [39 Stat. L. 945.]

SEC. 4. [Net proceeds from sale of surplus lands — Five Civilized Tribes.] That the net proceeds derived from the sale and entry of such surplus lands in conformity with the provisions of this Act shall be paid into the Treasury of the United States to the credit of the same fund under the same conditions and limitations as are or may be prescribed by law for the disposition of the proceeds arising from the disposal of other surplus lands in such Indian reservation: *Provided*, That the provisions of this Act shall not apply to the lands of the Five Civilized Tribes of Indians in Oklahoma. [39 Stat. L. 945.]

An Act Making appropriations for the current and contingent expenses of the Bureau of Indian Affairs, for fulfilling treaty stipulations with various Indian tribes, and for other purposes, for the fiscal year ending June thirtieth, nineteen hundred and eighteen.

[Act of March 2, 1917, ch. 146; 39 Stat. L. 969.]

[SEC. 1.] [Intoxicating liquors — conveyances transporting — seizure.]
* * * That automobiles or any other vehicles or conveyances used in introducing, or attempting to introduce, intoxicants into the Indian

country, or where the introduction is prohibited by treaty or Federal statute, whether used by the owner thereof or other person, shall be subject to the seizure, libel, and forfeiture provided in section twenty-one hundred and forty of the Revised Statutes of the United States. [39 Stat. L. 970.]

For R. S. sec. 2140 mentioned in the text see 3 Fed. Stat. Ann. 385; 3 Fed. Stat. Ann. (2d ed.) 915.

See also the Act of May 18, 1916, ch. 125, § 1, *supra*, p. 251; and the Act of May 25, 1918, ch. —, § 1, *infra*, p. 264.

Constitutionality.—This paragraph is constitutional. If Congress may prohibit the introduction of liquors from outside the state into the Indian territory portion of the state, it can certainly, as a means of enforcing this law and subserving the public policy which is involved in it, provide that the vehicles used in such illegal introduction shall be forfeited to the government, regardless of ownership, just as it has by numerous acts ever since the institution of this government provided for the forfeiture

of articles used in violation of the customs and revenue laws. That it has such power in the enforcement of the customs and revenue laws is settled by a long line of decisions. *U. S. v. One Buick Roadster Automobile*, 244 Fed. 961.

Scope.—This paragraph does not attempt to enlarge the right of officers to make search without warrant in other than Indian country. *U. S. v. One Buick Roadster Automobile*, 244 Fed. 961.

[Indian lands purchased for school or other administrative purposes — sale to highest bidder — proceeds.] * * * That the Secretary of the Interior is hereby authorized to cause to be sold, to the highest bidder, under such rules and regulations as he may prescribe, any tract or part of a tract of land purchased by the United States for day school or other Indian administrative uses, not exceeding one hundred and sixty acres in any one tract, when said land or a part thereof is no longer needed for the original purpose; the net proceeds therefrom in all cases to be paid into the Treasury of the United States; title to be evidenced by a patent in fee simple for such lands as can be described in terms of the legal survey, or by deed duly executed by the Secretary of the Interior containing such metes-and-bounds description as will identify the land so conveyed as the land which had been purchased: *Provided*, That where the purchase price was paid from tribal funds, such proceeds shall be placed in the Treasury of the United States to the credit of the respective tribes of Indians. [39 Stat. L. 973.]

[Rights of way through Indian lands for pipe line — former Act amended.] * * * That the following provision of the Act approved March eleventh, nineteen hundred and four (Thirty-third Statutes, page sixty-five), authorizing the Secretary of the Interior to grant rights of way across Indian lands for the conveyance of oil and gas, to wit: "No such lines shall be constructed across Indian lands, as above mentioned, until authority therefor has first been obtained from, and the maps of definite location of said lines approved by, the Secretary of the Interior," be, and the same is hereby, amended to read as follows:

"Before title to rights of way applied for hereunder shall vest, maps of definite location shall be filed with and approved by the Secretary of the Interior: *Provided*, That before such approval the Secretary of the Interior may, under such rules and regulations as he may prescribe, grant temporary permits revocable in his discretion for the construction of such lines." [39 Stat. L. 973.]

For the Act of March 11, 1904, ch. 505, amended by the text, see 10 Fed. Stat. Ann. 167; 3 Fed. Stat. Ann. (2d ed.) 903.

An Act Providing for the sale of the coal and asphalt deposits in the segregated mineral land in the Choctaw and Chickasaw Nations, Oklahoma.

[*Act of Feb. 8, 1918, ch. —, — Stat. L. —.*]

[SEC. 1.] **[Mineral lands in Choctaw and Chickasaw Nations — sale of coal and asphalt deposits — appraisement.]** That the Secretary of the Interior is hereby authorized to sell the coal and asphalt deposits, leased and unleased, in the segregated mineral area of the Choctaw and Chickasaw Nations, in Oklahoma, in the manner hereinafter set forth.

Before offering such coal and asphalt deposits for sale the Secretary of the Interior, under such rules and regulations as he may prescribe, shall cause the same to be appraised. Such appraisement, both as to leased and unleased lands, shall be described in tracts to conform to the descriptions of the legal subdivisions heretofore designated by the Secretary of the Interior, and shall be completed within six months after the passage of this Act. [— *Stat. L. —.*]

SEC. 2. **[Manner and terms of sale.]** That the sale of such deposits shall be thoroughly advertised, and shall not later than six months from the final appraisement be offered for sale to the highest bidder at public auction in tracts to conform with such appraisement at not less than the appraised value so fixed, except that isolated tracts of less than nine hundred and sixty acres may be sold separately under like provisions: *Provided*, That twenty per centum of the purchase price shall be paid in cash, and the remainder shall be paid in four equal annual payments from the date of the sale, and all deferred payments on all deposits sold under the provisions of this Act shall bear interest at the rate of five per centum per annum, and shall mature and become due before the expiration of four years after the date of such sale. [— *Stat. L. —.*]

SEC. 3. **[Resale.]** That immediately after the expiration of one year after the coal and asphalt deposits shall have been offered for sale, or forfeited for nonpayment under the terms of the sale, the Secretary of the Interior, under rules and regulations to be prescribed by him, shall readvertise and cause to be sold to the highest bidder at public auction, in tracts to conform to the descriptions of the legal subdivisions heretofore designated by the Secretary of the Interior, and at not less than said appraised value, retaining the right to reject any or all bids, all coal and asphalt deposits remaining unsold and all coal and asphalt deposits forfeited by reason of such nonpayment of any part of the purchase price: *Provided*, That at the expiration of six months thereafter the Secretary of the Interior may again readvertise and offer the same for final sale to the highest bidder at public auction, upon such terms as he may prescribe and at such valuation, independent of such appraised value, as he may fix. [— *Stat. L. —.*]

SEC. 4. **[Deposits of coal or asphalt on leased lands.]** That such deposits of coal or asphalt on the leased lands shall be sold subject to all rights of the lessee and that any person acquiring said deposits of coal

or asphalt shall take the same subject to said rights and acquire the same under the express understanding and agreement that the Department of the Interior will cancel and withdraw all rules and regulations and relinquish all authority heretofore exercised over the operation of said mines by reason of the Indian ownership of said property and that said properties thereafter shall be operated under and in conformity with such laws as may be applicable thereto, and that advance royalty paid by any lessee and standing to the credit of said lessee shall be credited by said purchaser to the extent of the amount thereof, and that no royalties shall be paid by said lessee to said purchaser until the credit so given shall be exhausted at the rate of 8 cents per ton mine run, and that the royalty to be paid thereafter by said lessee to said purchaser shall be 8 cents per ton mine run of coal, and that any lessee may, at any time after completion of such sale, transfer or dispose of his leasehold interest without any restriction whatever; and that any lessee shall have the preferential right, provided the same is exercised within ninety days after the approval of the completion of the appraisement of the minerals as herein provided, to purchase at the appraised value any or all of the surface of the lands lying within such lease held by him and heretofore reserved by order of the Secretary of the Interior and upon the terms as above provided, and shall also have the preferential right, except as herein otherwise provided, to purchase the coal deposits embraced in any lease held by such lessee by taking same at the highest price offered by any responsible bidder at public auction at not less than appraised value; and if any lessee becomes the purchaser of any coal deposits on any undeveloped lease owned by him, then one-half of the advance royalties paid by any lessee on such lease shall be credited on the purchase price thereof, and any residue of advance royalties heretofore paid by any lessee shall be credited to such lessee on account of any production of coal on any other lease which he may own and operate: *And provided*, That nothing herein contained shall be construed as limiting or curtailing the rights of any lessee or owner of mineral deposits from acquiring additional surface lands for mining operations as provided by the Act of Congress of February nineteenth, nineteen hundred and twelve: *Provided further*, That no person or corporation shall be permitted to acquire more than four tracts of nine hundred and sixty acres each, except where such person, firm, or corporation has such tracts under existing valid lease. [— *Stat. L.* —.]

For Act of Feb. 19, 1912, ch. 40, see 1914 Supp. Fed. Stat. Ann. 159.

SEC. 5. [Effect of Act on lands condemned for public purposes.] That the surface of any segregated coal and asphalt lands in the Choctaw and Chickasaw Nations, in the State of Oklahoma, which may have been, or may be, condemned under the laws of the State of Oklahoma for State penal institutions, or for county or municipal purposes, as authorized by the Indian appropriation Act approved March third, nineteen hundred and nine, shall be construed to include the entire estate, save the coal and asphalt reserved and existing valid leases thereon: *Provided*, That the State of Oklahoma shall have the preferential right of purchase, at the appraised value thereof, upon the same terms as apply to other coal and asphalt deposit sales under this Act, all coal and asphalt deposits under-

lying the surface heretofore purchased by the said State of Oklahoma, for the grounds of the State penitentiary: *Provided*, That said coal deposit under said land shall not be mined by convict labor for the purpose of sale to any private agencies, individual person, or corporation, or to be sold for private or commercial purposes. [— *Stat. L.* —.]

SEC. 6. [Enforcement of provisions of Act—rules, terms, and conditions—office—establishment.] That the Secretary of the Interior be, and he is hereby, authorized to prescribe such rules, regulations, terms, and conditions, not inconsistent with this Act, as he may deem necessary to carry out its provisions and shall establish an office for such purpose at McAlester, Pittsburg County, Oklahoma. [— *Stat. L.* —.]

SEC. 7. [Patents—issuance.] That when the full purchase price for any property sold hereunder is paid, the chief executives of the two tribes shall execute and deliver, with the approval of the Secretary of the Interior, to each purchaser an appropriate patent, conveying to the purchaser the property so sold: *Provided*, That the purchaser of any coal or asphalt deposits shall have the right at any time before final payment is due to pay the full purchase price on said coal and asphalt deposits, with accrued interest, and shall thereupon be entitled to a patent therefor as herein provided. [— *Stat. L.* —.]

SEC. 8. [Expenses of sale—payment—proceeds of sale—disposition.] That there is hereby appropriated, out of any Choctaw and Chickasaw funds in the Treasury not otherwise appropriated, the sum of \$50,000 to pay the expenses of appraisement, advertisement, and sale herein provided for, and the proceeds derived from the sales hereunder shall be paid into the Treasury of the United States to the credit of the Choctaws and Chickasaws. [— *Stat. L.* —.]

An Act Making appropriations for the current and contingent expenses of the Bureau of Indian Affairs, for fulfilling treaty stipulations with various Indian tribes, and for other purposes, for the fiscal year ending June thirtieth, nineteen hundred and nineteen.

[*Act of May 25, 1918, ch. —, — Stat. L.* —.]

[SEC. 1.] [Intoxicating liquors—possession as offense.] * * * That on and after September first, nineteen hundred and eighteen, possession by a person of intoxicating liquors in the Indian country where the introduction is or was prohibited by treaty or Federal statute shall be an offense and punished in accordance with the provisions of the Acts of July twenty-third, eighteen hundred and ninety-two (Twenty-seventh Statutes at Large, page two hundred and sixty), and January thirtieth, eighteen

hundred and ninety-seven (Twenty-ninth Statutes at Large, page five hundred and six). [— *Stat. L.* —.]

The Act of July 23, 1892, ch. 234, amended R. S. sec. 2139, see 3 Fed. Stat. Ann. 392; 3 Fed. Stat. Ann. (2d ed.) 913.

For the Act of Jan. 13, 1897, ch. 109, see 3 Fed. Stat. Ann. 394; 3 Fed. Stat. Ann. (2d ed.) 919.

See also the Act of May 18, 1916, ch. 125, sec. 1, *supra*, p. 251. And the Act of March 2, 1917, ch. 146, *supra*, p. 260.

[Expenditures for education.] * * * That hereafter no appropriation, except appropriations made pursuant to treaties, shall be used to educate children of less than one-fourth Indian blood whose parents are citizens of the United States and of the State wherein they live and where there are adequate free school facilities provided. [— *Stat. L.* —.]

[Employees in Indian Service — heat and light.] * * * That the Secretary of the Interior is authorized to allow employees in the Indian Service who are furnished quarters necessary heat and light for such quarters without charge, such heat and light to be paid for out of the fund chargeable with the cost of heating and lighting other buildings at the same place: *And provided further*, That the amount so expended for agency purposes shall not be included in the maximum amounts for compensation of employees prescribed by section one, Act of August twenty-fourth, nineteen hundred and twelve. [— *Stat. L.* —.]

For the Act of Aug. 24, 1912, ch. 388, mentioned in the text, see 1914 Supp. Fed. Stat. Ann. 170. This Act amended the Act of June 7, 1897, ch. 3, § 1, given in 3 Fed. Stat. Ann. (2d ed.) 763.

Provisions identical with those of this paragraph appeared in the Act of May 18, 1916, ch. 125, § 1, 39 Stat. L. 124.

[Expenditures for pupils in Indian schools — per capita.] That hereafter, except for pay of superintendents and for transportation of goods and supplies and transportation of pupils, not more than \$200 shall be expended from appropriations made in this Act, or any other Act, for the annual support and education of any one pupil in any Indian school, unless the attendance in any school shall be less than one hundred pupils, in which case the Secretary of the Interior may authorize a per capita expenditure of not to exceed \$225: *Provided*, That the total amount appropriated for the support of such school shall not be exceeded: *Provided further*, That the number of pupils in any school entitled to the per capita allowance hereby provided for shall be determined by taking the average attendance for the entire fiscal year and not any fractional part thereof: *Provided further*, That the foregoing shall also apply to expenditures for the fiscal year ending June thirtieth, nineteen hundred and eighteen. [— *Stat. L.* —.]

[Salaries of farmers and expert farmers.] That hereafter no money shall be expended for the employment of any farmer or expert farmer at a salary of or in excess of \$50 per month, unless he shall first have procured and filed with the Commissioner of Indian Affairs a certificate of competency showing that he is a farmer of actual experience and qualified to instruct others in the art of practical agriculture, such certificate to be

certified and issued to him by the president or dean of the State agricultural college of the State in which his services are to be rendered, or by the president or dean of the State agricultural college of an adjoining State: *Provided*, That this provision shall not apply to persons employed in the Indian Service as farmer or expert farmer prior to January first, nineteen hundred and seventeen: *And provided further*, That this shall not apply to Indians employed or to be employed as assistant farmer. [— *Stat. L. —*.]

SEC. 2. [Creation of new reservations, etc.] * * * That hereafter no Indian reservation shall be created, nor shall any additions be made to one heretofore created, within the limits of the States of New Mexico and Arizona, except by Act of Congress.

SEC. 18. [Claims against Cherokee Nation—limitation of time for filing.] * * * That all claims against the Cherokee Nation, including claims to unpaid per capita and equalization money, which may now be paid under existing law out of the funds of the Cherokee Nation in the Treasury of the United States or otherwise in the hands of the Government, shall be filed, not later than one year from the date of the approval of this Act, with the superintendent for the Five Civilized Tribes or such other person as the Secretary of the Interior may designate, and under such rules and regulations as said Secretary of the Interior may prescribe to govern the filing, determining and settlement of said claims, and the claims so submitted and filed shall be considered and adjudicated under said rules and regulations not later than six months after the expiration of the time above limited for the filing of the claims, and shall, if approved by the Secretary of the Interior, be paid out of the tribal funds of the Cherokee Nation. Upon the expiration of the time limited in this Act claims against the Cherokee Nation shall be forever barred, and all of said tribal funds then remaining to the credit of the Cherokee Nation shall be expended under the direction of the Secretary of the Interior for building and furnishing an additional dormitory for the Cherokee Orphan Training School, near Tahlequah, Oklahoma.

SEC. 28. [Segregation of tribal funds—deposit of funds incapable of segregation—interest—investment—exceptions.] That the Secretary of the Interior be, and he is hereby, authorized, under such rules and regulations as he may prescribe, to withdraw from the United States Treasury and segregate the common, or community funds of any Indian tribe which are, or may hereafter be, held in trust by the United States, and which are susceptible of segregation, so as to credit an equal share to each and every recognized member of the tribe except those whose pro rata shares have already been withdrawn under existing law, and to deposit the funds so segregated in banks to be selected by him, in the State or States in which the tribe is located, subject to withdrawal for payment to the individual owners or expenditure for their benefit under the regulations governing the use of other individual Indian moneys. The said Secretary is also authorized, under such rules and regulations as he may prescribe, to withdraw from the Treasury and deposit in banks in the State or States in which

the tribe is located to the credit of the respective tribes, such common, or community, trust funds as are not susceptible of segregation as aforesaid, and on which the United States is not obligated by law to pay interest at higher rates than can be procured from the banks: *Provided*, That no tribal or individual Indian money shall be deposited in any bank until the bank shall have agreed to pay interest thereon at a reasonable rate and shall have furnished an acceptable bond or collateral security therefor, and United States bonds may be furnished as collateral security for either tribal or individual funds so deposited, in lieu of surety bonds: *Provided further*, That the Secretary of the Interior, if he deems it advisable and for the best interest of the Indians, may invest the trust funds of any tribe or individual Indian in United States Government bonds: *And provided further*, That any part of tribal funds required for support of schools or pay of tribal officers shall be excepted from segregation or deposit as herein authorized and the same shall be expended for the purposes aforesaid: *Provided, however*, That the funds of any tribe shall not be segregated until the final rolls of said tribe are complete: *And provided further*, That the foregoing shall not apply to the funds of the Five Civilized Tribes, or the Osage Tribe of Indians, in the State of Oklahoma, but the funds of such tribes and individual members thereof shall be deposited in the banks of Oklahoma or in the United States Treasury and may be secured by the deposit of United States bonds.

An Act To provide for a determination of heirship in cases of deceased members of the Cherokee, Choctaw, Chickasaw, Creek, and Seminole Tribes of Indians in Oklahoma, conferring jurisdiction upon district courts to partition lands belonging to full-blood heirs of allottees of the Five Civilized Tribes, and for other purposes.

[*Act of June 14, 1918, ch. —, — Stat. L. —.*]

[SEC. 1.] [Determination of heirship in cases of deceased members of Five Civilized Tribes — administration proceedings.] That a determination of the question of fact as to who are the heirs of any deceased citizen allottee of the Five Civilized Tribes of Indians who may die or may have heretofore died, leaving restricted heirs, by the probate court of the State of Oklahoma having jurisdiction to settle the estate of said deceased, conducted in the manner provided by the laws of said State for the determination of heirship in closing up the estates of deceased persons, shall be conclusive of said question: *Provided*, That an appeal may be taken in the manner and to the court provided by law, in cases of appeal in probate matters generally: *Provided further*, That where the time limited by the laws of said State for the institution of administration proceedings has elapsed without their institution, as well as in cases where there exists no lawful ground for the institution of administration proceedings in said courts, a petition may be filed therein having for its object a determination of such heirship and the case shall proceed in all respects as if administration proceedings upon other proper grounds had been regularly begun, but

this proviso shall not be construed to reopen the question of the determination of an heirship already ascertained by competent legal authority under existing laws: *Provided further*, That said petition shall be verified, and in all cases arising hereunder service by publication may be had on all unknown heirs, the service to be in accordance with the method of serving nonresident defendants in civil suits in the district courts of said State; and if any person so served by publication does not appear and move to be heard within six months from the date of the final order, he shall be concluded equally with parties personally served or voluntarily appearing. [— *Stat. L.* —.]

SEC. 2. [Lands of members of Five Civilized Tribes subject to Oklahoma partition laws — restrictions.] That the lands of full-blood members of any of the Five Civilized Tribes are hereby made subject to the laws of the State of Oklahoma, providing for the partition of real estate. Any land allotted in such proceedings to a full-blood Indian, or conveyed to him upon his election to take the same at the appraisement, shall remain subject to all restrictions upon alienation and taxation obtaining prior to such partition. In case of a sale under any decree, or partition, the conveyance thereunder shall operate to relieve the land described of all restrictions of every character. [— *Stat. L.* —.]

INFANTS

See LABOR

INHERITANCE TAX

See INTERNAL REVENUE

INSANE PERSONS

See HOSPITALS AND ASYLUMS

INSURANCE

See WAR DEPARTMENT AND MILITARY ESTABLISHMENT

INTERIOR DEPARTMENT

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Act of March 3, 1917, ch. 163, 269.

Chief Clerk — Duties, 269.

Res. of March 28, 1918, No. —, 269.

Official Papers and Documents — by whom Signed, 269.

SEC. 3. [Clerks and employees — R. S. sec. 440 amended.] That so much of section four hundred and forty of the Revised Statutes as follows the words "In the Patent Office," and refers to said office only, be amended to read as follows:

"One chief clerk, who shall be qualified to act as a principal examiner.

"One librarian, who shall be qualified to act as an assistant examiner.

"Five law examiners.

"One examiner of classification.

"One examiner of interferences.

"One examiner of trade-marks and designs.

"One first assistant examiner of trade-marks and designs.

"Six assistant examiners of trade-marks and designs.

"Forty-three principal examiners.

"Eighty-six first assistant examiners.

"Eighty-six second assistant examiners.

"Eighty-six third assistant examiners.

"Eighty-six fourth assistant examiners; and such other examiners and assistant examiners in the various grades as the Congress shall from time to time provide for." [39 Stat. L. 9.]

This is from an Act of Feb. 15, 1916, ch. 22, entitled "An Act Amending sections four hundred and seventy-six, four hundred and seventy-seven, and four hundred and forty of the Revised Statutes of the United States."

For R. S. sec. 440, amended by this section, see 3 Fed. Stat. Ann. 536; 3 Fed. Stat. Ann. (2d ed.) 946.

For section 1 and 2 of this Act, amending R. S. secs. 476, 477, see PATENTS, *post*.

[Chief clerk — duties.] * * * chief clerk, * * * who shall be chief executive officer of the department and who may be designated by the Secretary to sign official papers and documents during the temporary absence of the Secretary and the Assistant Secretaries. [39 Stat. L. 1102.]

This is from the Legislative, Executive and Judicial Appropriation Act of March 3, 1917, ch. 163, following an appropriation for the salary of the Secretary of the Interior. An identical provision appeared in the like Act of May 10, 1916, ch. 117, § 1, 39 Stat. L. 98.

Joint Resolution Authorizing the assistant to the Secretary of the Interior to sign official papers and documents.

[Resolution of March 28, 1918, No. —, — Stat. L. —.]

[Official papers and documents — by whom signed.] That the assistant to the Secretary of the Interior be, and hereby is, authorized to sign such official papers and documents as the Secretary may direct. [— Stat. L. —.]

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CROSS-REFERENCES

See *CUSTOMS DUTIES; POSTAL SERVICE; UNFAIR COMPETITION; WEST INDIAN ISLANDS.*

I. OFFICERS OF INTERNAL REVENUE

[Officers of Internal Revenue—designation of posts of duties—Internal Revenue agents—pay.] * * * Hereafter the Commissioner of Internal Revenue shall determine and designate the posts of duty of all employees of the Internal Revenue Service engaged in field work or traveling on official business outside of the District of Columbia, and when ordered from their designated posts of duty all internal revenue agents appointed under Section thirty-one hundred and fifty-two, Revised Statutes, as amended, and cotton-futures attorneys, may be granted per diem in lieu of subsistence not exceeding \$4, and, when ordered from their designated posts of duty, income-tax agents and inspectors, special gaugers, and special employees may be granted a per diem in lieu of subsistence not exceeding \$3, the per diem in lieu of subsistence to be fixed by the Commissioner of Internal Revenue, subject to the approval of the Secretary of the Treasury. [39 Stat. L. 87.]

This is from the Legislative, Executive and Judicial Appropriation Act of May 10, 1916, ch. 177.

For R. S. sec. 3152, mentioned in the text, see 3 Fed. Stat. Ann. 564; 3 Fed. Stat. Ann. (2d ed.) 984.

SEC. 16. [Disclosure by revenue officers of operations, etc., prohibited — penalty — R. S. sec. 3167 amended.] That sections thirty-one hundred and sixty-seven, thirty-one hundred and seventy-two, thirty-one hundred and seventy-three, and thirty-one hundred and seventy-six of the Revised Statutes of the United States as amended are hereby amended so as to read as follows:

“**Sec. 3167.** It shall be unlawful for any collector, deputy collector, agent, clerk, or other officer or employee of the United States to divulge or to make known in any manner whatever not provided by law to any person the operations, style of work, or apparatus of any manufacturer or producer visited by him in the discharge of his official duties, or the amount or source of income, profits, losses, expenditures, or any particular thereof, set forth or disclosed in any income return, or to permit any income return or copy thereof or any book containing any abstract or particulars thereof to be seen or examined by any person except as provided by law; and it shall be unlawful for any person to print or publish in any manner whatever not provided by law any income return or any part thereof or source of income, profits, losses, or expenditures appearing in any income return; and any offense against the foregoing provision shall be a misdemeanor and be punished by a fine not exceeding \$1,000 or by imprisonment not exceeding one year, or both, at the discretion of the court; and if the offender be an officer or employee of the United States he shall be dismissed from office or discharged from employment.” [39 Stat. L. 773.]

This is a part of section 16 of an Act of Sept. 8, 1916, ch. 463, entitled “An Act To increase the revenue and for other purposes.”

For R. S. sec. 3167, amended by the text, see 3 Fed. Stat. Ann. 574; 3 Fed. Stat. Ann. (2d ed.) 990.

SEC. 413. [Agents and inspectors — leave of absence.] That all internal revenue agents and inspectors be granted leave of absence with pay, which shall not be cumulative, not to exceed thirty days in any calendar year, under such regulations as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may prescribe. [39 Stat. L. 793.]

This section is a part of Title IV of the Act of Sept. 8, 1916, ch. 463, of which Act the foregoing section 16 is also a part. See the notes to section 15 of this Act, *infra*, p. 374.

[SEC. 1.] [Deputy commissioners of internal revenue — duties.] * * * The Commissioner of Internal Revenue is authorized to assign to deputy commissioners such duties as he may prescribe, and the Secretary of the Treasury may designate any one of them to act as Commissioner of Internal Revenue during the commissioner's absence. [— Stat. L. —.]

This is from the Deficiencies Appropriation Act of Oct. 6, 1917, ch. —.

II. ASSESSMENTS AND COLLECTIONS

[SEC. 1.] [Internal Revenue collections — disposition.] * * * That collectors of internal revenue shall pay daily into the Treasury of the United States, under instructions of the Secretary of the Treasury, the gross amounts of all collections of whatever nature, made by authority of law (including sums offered in compromise under the provisions of section thirty-two hundred and twenty-nine, Revised Statutes, as well as all other money received for which they are accountable under their respective collection bonds required to be given under section thirty-one hundred and forty-three, Revised Statutes), and the same shall be covered into the Treasury as internal-revenue collections: *Provided*, That nothing herein contained shall be construed as affecting the provisions of subsection "D" of Section II, Act of October third, nineteen hundred and thirteen, in the matter of withholding the normal income tax at the source. [39 Stat. L. 86.]

This is from the Legislative, Executive and Judicial Appropriation Act of May 10, 1916, ch. 177.

For R. S. sec. 3229, mentioned in the text, see 3 Fed. Stat. Ann. 604; 3 Fed. Stat. Ann. (2d ed.) 1038.

For R. S. sec. 3143, mentioned in the text, see 3 Fed. Stat. Ann. 558; 3 Fed. Stat. Ann. (2d ed.) 979.

For the Act of Oct. 3, 1913, ch. 16, § II, subdivision "D," mentioned in the text, see 1914 Supp. Fed. Stat. Ann. 187; 4 Fed. Stat. Ann. (2d ed.) 241. Said last cited Act was repealed by the Act of Sept. 8, 1916, ch. 463, § 24, *infra*, p. 377.

SEC. 14. [Suits to recover taxes under second assessment — burden of proof as to fraud — exceptions — R. S. sec. 3225 amended.] * * * (d) That section thirty-two hundred and twenty-five of the Revised Statutes of the United States be, and the same is hereby, amended so as to read as follows:

"Sec. 3225. When a second assessment is made in case of any list, statement, or return, which in the opinion of the collector or deputy collector was false or fraudulent, or contained any understatement or undervaluation, no tax collected under such assessment shall be recovered by any suit unless it is proved that the said list, statement, or return was not false nor fraudulent and did not contain any understatement or undervaluation; but this section shall not apply to statements or returns made or to be made in good faith under the laws of the United States regarding annual depreciation of oil or gas wells and mines." [39 Stat. L. 773.]

The foregoing part of section 14 and the following portion of section 16 are a part of an Act of Sept. 8, 1916, ch. 463, entitled "An Act To increase the revenue, and for other purposes."

For R. S. sec. 3225, amended by this section, see 3 Fed. Stat. Ann. 601; 3 Fed. Stat. Ann. (2d ed.) 1033.

SEC. 16. [Canvass of districts for objects of taxation — annual returns of persons liable to tax — failure to make return — return by officer — penalty — R. S. secs. 3172, 3173, 3176 amended.] That sections thirty-one hundred and sixty-seven, thirty-one hundred and seventy-two, thirty-

one hundred and seventy-three, and thirty-one hundred and seventy-six of the Revised Statutes of the United States as amended are hereby amended so as to read as follows: * * *

“ **Sec. 3172.** Every collector shall, from time to time, cause his deputies to proceed through every part of his district and inquire after and concerning all persons therein who are liable to pay any internal-revenue tax, and all persons owning or having the care and management of any objects liable to pay any tax, and to make a list of such persons and enumerate said objects.

“ **Sec. 3173.** It shall be the duty of any person, partnership, firm, association, or corporation, made liable to any duty, special tax, or other tax imposed by law, when not otherwise provided for, (1) in case of a special tax, on or before the thirty-first day of July in each year, (2) in case of income tax on or before the first day of March in each year, or on or before the last day of the sixty-day period next following the closing date of the fiscal year for which it makes a return of its income, and (3) in other cases before the day on which the taxes accrue, to make a list or return, verified by oath, to the collector or deputy collector of the district where located, of the articles or objects, including the amount of annual income charged with a duty or tax, the quantity of goods, wares, and merchandise, made or sold and charged with a tax, the several rates and aggregate amount, according to the forms and regulations to be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, for which such person, partnership, firm, association, or corporation is liable: *Provided*, That if any person liable to pay any duty or tax, or owning, possessing, or having the care or management of property, goods, wares, and merchandise, article or objects liable to pay any duty, tax, or license, shall fail to make and exhibit a list or return required by law, but shall consent to disclose the particulars of any and all the property, goods, wares, and merchandise, articles, and objects liable to pay any duty or tax, or any business or occupation liable to pay any tax as aforesaid, then, and in that case, it shall be the duty of the collector or deputy collector to make such list or return, which being distinctly read, consented to, and signed and verified by oath by the person so owning, possessing, or having the care and management as aforesaid, may be received as the list of such person: *Provided further*, That in case no annual list or return has been rendered by such person to the collector or deputy collector as required by law, and the person shall be absent from his or her residence or place of business at the time the collector or a deputy collector shall call for the annual list or return, it shall be the duty of such collector or deputy collector to leave at such place of residence or business, with some one of suitable age and discretion, if such be present, otherwise to deposit in the nearest post office, a note or memorandum addressed to such person, requiring him or her to render to such collector or deputy collector the list or return required by law within ten days from the date of such note or memorandum, verified by oath. And if any person, on being notified or required as aforesaid, shall refuse or neglect to render such list or return within the time required as aforesaid, or whenever any

person who is required to deliver a monthly or other return of objects subject to tax fails to do so at the time required, or delivers any return which, in the opinion of the collector, is erroneous, false, or fraudulent, or contains any undervaluation or understatement, or refuses to allow any regularly authorized Government officer to examine the books of such person, firm, or corporation, it shall be lawful for the collector to summon such person, or any other person having possession, custody, or care of books of account containing entries relating to the business of such person, or any other person he may deem proper, to appear before him and produce such books at a time and place named in the summons, and to give testimony or answer interrogatories, under oath, respecting any objects or income liable to tax or the returns thereof. The collector may summon any person residing or found within the State or Territory in which his district lies; and when the person intended to be summoned does not reside and can not be found within such State or Territory, he may enter any collection district where such person may be found and there make the examination herein authorized. And to this end he may there exercise all the authority which he might lawfully exercise in the district for which he was commissioned: *Provided*, That 'person,' as used in this section, shall be construed to include any corporation, joint-stock company or association, insurance company when such construction is necessary to carry out its provisions.

"Sec. 3176. If any person, corporation, company, or association, fails to make and file a return or list at the time prescribed by law, or makes, willfully or otherwise, a false or fraudulent return or list, the collector or deputy collector shall make the return or list from his own knowledge and from such information as he can obtain through testimony or otherwise. Any return or list so made and subscribed by a collector or deputy collector shall be *prima facie* good and sufficient for all legal purposes.

"If the failure to file a return or list due to sickness or absence the collector may allow such further time, not exceeding thirty days, for making and filing the return or list as he deems proper.

"The Commissioner of Internal Revenue shall assess all taxes, other than stamp taxes, as to which returns or lists are so made by a collector or deputy collector. In case of any failure to make and file a return or list within the time prescribed by law or by the collector, the Commissioner of Internal Revenue shall add to the tax fifty per centum of its amount except that, when a return is voluntarily and without notice from the collector filed after such time and it is shown that the failure to file it was due to a reasonable cause and not to willful neglect, no such addition shall be made to the tax. In case a false or fraudulent return or list is willfully made, the Commissioner of Internal Revenue shall add to the tax one hundred per centum of its amount.

"The amount so added to any tax shall be collected at the same time and in the same manner and as part of the tax unless the tax has been paid before the discovery of the neglect, falsity, or fraud, in which case the

amount so added shall be collected in the same manner as the tax." [39 Stat. L. 773.]

See the notes to the preceding section 14 of this Act.

For R. S. secs. 3172, 3173 and 3176, amended by this section, see 3 Fed. Stat. Ann. 576, 577, 580; 3 Fed. Stat. Ann. (2d ed.) 1002, 1006.

Power to assess stamp taxes exists, title INTERNAL REVENUE, 3 Fed. Stat. 583, since this sec. 3176 is not a limitation 3 Fed. Stat. Ann. (2d ed.). *Calkins v. Smietanka*, (N. D. Ill. 1917) 240 Fed. 138.

III. SPECIAL TAXES

An Act To amend subsection eleven of section thirty-two hundred and forty-four, Revised Statutes.

[Act of Sept. 7, 1916, ch. 453, 39 Stat. L. 740.]

[Special taxes imposed on whom—peddlers of tobacco—R. S. sec. 3244, subsec. 11, amended.] That subsection eleven of section thirty-two hundred and forty-four, Revised Statutes, be amended by adding at the end of said subsection the following: *Provided*, That manufacturers of, jobbers and wholesale dealers in, manufactured tobacco, snuff, cigars, and cigarettes, and the agents or salesmen of such manufacturers, jobbers, and wholesale dealers, traveling from place to place, in the town or through the country, and selling and delivering or offering to sell and deliver such products only to dealers, shall not be construed to be peddlers. [39 Stat. L. 740.]

For R. S. sec. 3244, subsec. 11, amended by this Act, see 3 Fed. Stat. Ann. 621; 3 Fed. Stat. Ann. (2d ed.) 1052.

SEC. 407. Special Taxes. That on and after January first, nineteen hundred and seventeen, special taxes shall be, and hereby are, imposed annually, as follows, that is to say:

[Corporations — joint-stock companies or associations — insurance companies.] Every corporation, joint-stock company or association, now or hereafter organized in the United States for profit and having a capital stock represented by shares, and every insurance company, now or hereafter organized under the laws of the United States, or any State or Territory of the United States, shall pay annually a special excise tax with respect to the carrying on or doing business by such corporation, joint-stock company or association, or insurance company, equivalent to 50 cents for each \$1,000 of the fair value of its capital stock and in estimating the value of capital stock the surplus and undivided profits shall be included: *Provided*, That in the case of insurance companies such deposits and reserve funds as they are required by law or contract to maintain or hold for the protection of or payment to or apportionment among policyholders shall not be included. The amount of such annual tax shall in all cases be computed on the basis of the fair average value of the capital stock for the preceding year: *Provided*, That for the purpose of this tax an exemption of \$99,000

shall be allowed from the capital stock as defined in this paragraph of each corporation, joint-stock company or association, or insurance company: *Provided further*, That a corporation, joint-stock company or association, or insurance company, actually paying the tax imposed by section three hundred and one of Title III of this Act shall be entitled to a credit as against the tax imposed by this paragraph equal to the amount of the tax so actually paid: *And provided further*, That this tax shall not be imposed upon any corporation, joint-stock company, or association or insurance company not engaged in business during the preceding taxable year, or which is exempt under the provisions of section eleven, Title I, of this Act.

Every corporation, joint-stock company or association, or insurance company, now or hereafter organized for profit under the laws of any foreign country and engaged in business in the United States shall pay annually a special excise tax with respect to the carrying on or doing business in the United States by such corporation, joint-stock company, or association or insurance company, equivalent to 50 cents for each \$1,000 of the capital actually invested in the transaction of its business in the United States: *Provided*, That in the case of insurance companies such deposits or reserve funds as they are required by law or contract to maintain or hold in the United States for the protection of or payment to or apportionment among policyholders, shall not be included. The amount of such annual tax shall in all cases be computed on the basis of the average amount of capital so invested during the preceding year: *Provided*, That for the purpose of this tax an exemption from the amount of capital so invested shall be allowed equal to such proportion of \$99,000 as the amount so invested bears to the total amount invested in the transaction of business in the United States or elsewhere: *Provided further*, That this exemption shall be allowed only if such corporation, joint-stock company or association, or insurance company makes return to the Commissioner of Internal Revenue, under regulations prescribed by him, with the approval of the Secretary of the Treasury, of the amount of capital invested in the transaction of business outside the United States: *And provided further*, That a corporation, joint-stock company or association, or insurance company actually paying the tax imposed by section three hundred and one of Title III of this act, shall be entitled to a credit as against the tax imposed by this paragraph equal to the amount of the tax so actually paid: *And provided further*, That this tax shall not be imposed upon any corporation, joint-stock company or association, or insurance company not engaged in business during the preceding taxable year, or which is exempt under the provisions of section eleven, Title I, of this Act.

Second. [Brokers.] Brokers shall pay \$30. Every person, firm, or company, whose business it is to negotiate purchases or sales of stocks, bonds, exchange, bullion, coined money, bank notes, promissory notes, or other securities, for others, shall be regarded as a broker.

Third. [Pawnbrokers.] Pawnbrokers shall pay \$50. Every person, firm, or company whose business or occupation it is to take or receive, by way of pledge, pawn, or exchange, any goods, wares, or merchandise, or

any kind of personal property whatever, as security for the repayment of money loaned thereon, shall be deemed a pawnbroker.

Fourth. **[Ship brokers.]** Ship brokers shall pay \$20. Every person, firm, or company whose business it is as a broker to negotiate freights and other business for the owners of vessels, or for the shippers or consignors or consignees of freight carried by vessels, shall be regarded as a ship broker under this section.

Fifth. **[Customhouse brokers.]** Customhouse brokers shall pay \$10. Every person, firm, or company whose occupation it is, as the agent of others, to arrange entries and other customhouse papers, or transact business at any port of entry relating to the importation or exportation of goods, wares, or merchandise, shall be regarded as a customhouse broker.

Sixth. **[Proprietors of theaters, museums, and concert halls.]** Proprietors of theaters, museums, and concert halls, where a charge for admission is made, having a seating capacity of not more than two hundred and fifty, shall pay \$25; having a seating capacity of more than two hundred and fifty and not exceeding five hundred, shall pay \$50; having a seating capacity exceeding five hundred and not exceeding eight hundred, shall pay \$75; having a seating capacity of more than eight hundred, shall pay \$100. Every edifice used for the purpose of dramatic or operatic or other representations, plays, or performances, for admission to which entrance money is received, not including halls or armories rented or used occasionally for concerts or theatrical representations, shall be regarded as a theater: *Provided*, That in cities, towns, or villages of five thousand inhabitants or less the amount of such payment shall be one-half of that above stated: *Provided further*, That whenever any such edifice is under lease at the passage of this Act, the tax shall be paid by the lessee, unless otherwise stipulated between the parties to said lease.

Seventh. **[Proprietors of circuses.]** The proprietor or proprietors of circuses shall pay \$100. Every building, space, tent, or area where feats of horsemanship or acrobatic sports or theatrical performances not otherwise provided for in this section are exhibited shall be regarded as a circus: *Provided*, That no special tax paid in one State, Territory, or the District of Columbia shall exempt exhibitions from the tax in another State, Territory, or the District of Columbia, and but one special tax shall be imposed for exhibitions within any one State, Territory, or District.

Eighth. **[Proprietors etc., of public exhibitions, etc.]** Proprietors or agents of all other public exhibitions or shows for money not enumerated in this section shall pay \$10: *Provided*, That a special tax paid in one State, Territory, or the District of Columbia shall not exempt exhibitions from the tax in another State, Territory, or the District of Columbia, and but one special tax shall be required for exhibitions within any one State, Territory, or the District of Columbia: *Provided further*, That this paragraph shall not apply to Chautauquas, lecture lyceums, agricultural or industrial fairs, or exhibitions held under the auspices of religious or chari-

table associations: *Provided further*, That an aggregation of entertainments, known as a street fair, shall not pay a larger tax than \$100 in any State, Territory, or in the District of Columbia.

Ninth. [Proprietors of bowling alleys and billiard rooms.] Proprietors of bowling alleys and billiard rooms shall pay \$5 for each alley or table. Every building or place where bowls are thrown or where games of billiards or pool are played, except in private homes, shall be regarded as a bowling alley or a billiard room, respectively. [39 Stat. L. 789.]

The foregoing sec. 407 and the following sec. 408 are a part of Title IV of an Act of Sept. 8, 1916, ch. 463, entitled "An Act To increase the revenue and for other purposes." Various other sections of this Act, containing administrative provisions, etc., are given in subdivision XV of this title, *infra*, p. 374, and should be read in connection with these sections.

Sec. 301 of Title III of this Act, mentioned in the second and third paragraphs of this section, is given *infra*, p. 297.

SEC. 408. [Special taxes on tobacco, cigar, and cigarette manufacturers.] That on and after January first, nineteen hundred and seventeen, special taxes on tobacco, cigar, and cigarette manufacturers shall be, and hereby are, imposed annually as follows, the amount of such annual taxes to be computed in all cases on the basis of the annual sales for the preceding fiscal year:

Manufacturers of tobacco whose annual sales do not exceed fifty thousand pounds shall each pay \$3;

Manufacturers of tobacco whose annual sales exceed fifty thousand and do not exceed one hundred thousand pounds shall each pay \$6;

Manufacturers of tobacco whose annual sales exceed one hundred thousand and do not exceed two hundred thousand pounds shall each pay \$12;

Manufacturers of tobacco whose annual sales exceed two hundred thousand pounds shall each pay at the rate of 8 cents per thousand pounds, or fraction thereof;

Manufacturers of cigars whose annual sales do not exceed fifty thousand cigars shall each pay \$2;

Manufacturers of cigars whose annual sales exceed fifty thousand and do not exceed one hundred thousand cigars shall each pay \$3;

Manufacturers of cigars whose annual sales exceed one hundred thousand and do not exceed two hundred thousand cigars shall each pay \$6;

Manufacturers of cigars whose annual sales exceed two hundred thousand and do not exceed four hundred thousand cigars shall each pay \$12;

Manufacturers of cigars whose annual sales exceed four hundred thousand cigars shall each pay at the rate of 5 cents per thousand cigars, or fraction thereof;

Manufacturers of cigarettes, including small cigars weighing not more than three pounds per thousand, shall each pay at the rate of 3 cents for every ten thousand cigarettes, or fraction thereof.

In arriving at the amount of special tax to be paid under this section, and in the levy and collection of such tax, each person, firm, or corporation engaged in the manufacture of more than one of the classes of articles specified in this section shall be considered and deemed a manufacturer of each class separately.

Every person who carries on any business or occupation for which special taxes are imposed by this title, without having paid the special tax therein

provided, shall, besides being liable to the payment of such special tax, be deemed guilty of a misdemeanor, and upon conviction thereof shall pay a fine of not more than \$500, or be imprisoned not more than six months, or both, in the discretion of the court. [39 Stat. L. 792.]

See the note to the preceding sec. 407 of this Act.

IV. BEVERAGES

An Act To amend existing laws relating to the use of alcohol, free of tax, by scientific institutions or colleges of learning.

[Act of July 8, 1916, ch. 236, 39 Stat. L. 354.]

[Alcohol withdrawn for scientific purposes—former act amended.] That an Act entitled “An Act to extend the provisions of section thirty-two hundred and ninety-seven of the Revised Statutes to other institutions of learning,” approved May third, eighteen hundred and seventy-eight, is hereby amended to read as follows:

“That the Secretary of the Treasury is authorized to grant permits, as provided for in section thirty-two hundred and ninety-seven of the Revised Statutes of the United States, for the withdrawal of alcohol from bond, free of tax to any scientific university or college of learning created and constituted as such by any State or Territory under its laws, though not incorporated or chartered, and to any hospital maintained by endowment or otherwise, and not conducted for profit, upon the same terms and subject to the same restrictions and penalties already provided by said section thirty-two hundred and ninety-seven: *Provided, however,* That alcohol so obtained by hospitals may be used in surgical operations and, except as a beverage, in the treatment of patients, under such regulations as the Secretary of the Treasury may prescribe: *And provided, further,* That the bond required by said section thirty-two hundred and ninety-seven may be executed by an officer of such hospital or institution or by any other person for it, and on its behalf, with two good and sufficient sureties, upon like conditions, and to be approved as by said section is provided.” [39 Stat. L. 354.]

For R. S. sec. 3297, mentioned in this Act, see 3 Fed. Stat. Ann. 672; 4 Fed. Stat. Ann. (2d. ed.) 58.

For the Act of May 3, 1878, ch. 88, amended by this Act, see 3 Fed. Stat. Ann. 673; 4 Fed. Stat. Ann. (2d ed.) 93.

An Act To amend an Act entitled “An Act to amend an Act entitled ‘An Act for the withdrawal from bond tax free of domestic alcohol when rendered unfit for beverage or liquid medicinal uses when mixed with suitable denaturing materials,’ ” approved March second, nineteen hundred and seven.

[Act of June 22, 1916, ch. 163, 39 Stat. L. 233.]

[Denatured alcohol—transfer from distillery to bonded warehouse—allowances—former Act amended.] That the Act entitled “An Act to

amend an Act entitled 'An Act for the withdrawal from bond tax free of domestic alcohol when rendered unfit for beverage or liquid medicinal uses when mixed with suitable denaturing materials,' " approved March second, nineteen hundred and seven, be, and the same is hereby, amended by adding to section three thereof the following:

" *Provided*, That where alcohol is withdrawn from a distillery warehouse for shipment to a central denaturing bonded warehouse under the provisions of this Act it shall be lawful under such rules, regulations, and limitations as shall be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, for an allowance to be made for leakage or loss by any accident, and without any fraud or negligence of the distiller, owner, carrier, or their agents or employees, occurring during transportation from a distillery warehouse to a central denaturing bonded warehouse. [39 Stat. L. 233.]

For the Act of March 2, 1907, ch. 2571, § 3, amended by this Act, see 1900 Supp. Fed. Stat. Ann. 262; 4 Fed. Stat. Ann. (2d ed.) 120.

SEC. 400. [Tax on fermented liquors — R. S. sec. 3339 amended.] That there shall be levied, collected, and paid a tax of \$1.50 on all beer, lager beer, ale, porter, and other similar fermented liquor, brewed or manufactured and sold, or stored in warehouse, or removed for consumption or sale, within the United States, by whatever name such liquors may be called, for every barrel containing not more than thirty-one gallons; and at a like rate for any other quantity or for the fractional parts of a barrel authorized and defined by law. And section thirty-three hundred and thirty-nine of the Revised States is hereby amended accordingly. [39 Stat. L. 783.]

The foregoing sec. 400 and the following secs. 401-406 are a part of "Title IV — Miscellaneous Taxes" of the Act of Sept. 8, 1916, ch. 463, entitled "An Act to increase the revenue and for other purposes." General administrative provisions of this Act which affect these sections and should be read in connection therewith are given under subdivision XV, *infra*, p. 374.

For R. S. sec. 3339, amended by this section, see 3 Fed. Stat. Ann. 713; 4 Fed. Stat. Ann. (2d ed.) 126.

SEC. 401. ["Wine" within meaning of Act.] That natural wine within the meaning of this Act shall be deemed to be the product made from the normal alcoholic fermentation of the juice of sound, ripe grapes, without addition or abstraction, except such as may occur in the usual cellar treatment of clarifying and aging: *Provided, however*, That the product made from the juice of sound, ripe grapes by complete fermentation of the must under proper cellar treatment and corrected by the addition (under the supervision of a gauger or storekeeper-gauger in the capacity of gauger) of a solution of water and pure cane, beet, or dextrose sugar (containing, respectively, not less than ninety-five per centum of actual sugar, calculated on a dry basis) to the must or to the wine, to correct natural deficiencies, when such addition shall not increase the volume of the resultant product

more than thirty-five per centum, and the resultant product does not contain less than five parts per thousand of acid before fermentation and not more than thirteen per centum of alcohol after complete fermentation, shall be deemed to be wine within the meaning of this Act, and may be labeled, transported, and sold as "wine," qualified by the name of the locality where produced, and may be further qualified by the name its own particular type or variety: *And provided further*, That wine as defined in this section may be sweetened with cane sugar or beet sugar or pure condensed grape must and fortified under the provisions of this Act, and wines so sweetened or fortified shall be considered sweet wine within the meaning of this Act. [39 Stat. L. 783.]

See the note to the preceding sec. 400 of this Act.

SEC. 402. (a) [Tax on wines — alcoholic strengths — abatement of former taxes.] That upon all still wines, including vermouth, and upon all artificial or imitation wines or compound sold as wine hereafter produced in or imported into the United States, and upon all like wines which on the date this section takes effect shall be in the possession or under the control of the producer, holder, dealer, or compounder there shall be levied, collected, and paid taxes at rates as follows:

On wines containing not more than fourteen per centum of absolute alcohol, 4 cents per wine gallon, the per centum of alcohol taxable under this section to be reckoned by volume and not by weight.

On wines containing more than fourteen per centum and not exceeding twenty-one per centum of absolute alcohol, 10 cents per wine gallon.

On wines containing more than twenty-one per centum and not exceeding twenty-four per centum of absolute alcohol, 25 cents per wine gallon.

All such wines containing more than twenty-four per centum of absolute alcohol by volume shall be classed as distilled spirits and shall pay tax accordingly: *Provided*, That on all unsold still wines in the actual possession of the producer at the time this title takes effect, upon which the tax imposed by the Act approved October twenty-second, nineteen hundred and fourteen, entitled "An Act to increase the internal revenue and for other purposes," and the joint resolution approved December seventeenth, nineteen hundred and fifteen, entitled "Joint resolution extending the provisions of the Act entitled 'An Act to increase the internal revenue, and for other purposes,' approved October twenty-second, nineteen hundred and fourteen, to December thirty-first, nineteen hundred and sixteen," has been assessed, the tax so assessed shall be abated, or, if paid, refunded under such regulations as the Commissioner of Internal Revenue, which the approval of the Secretary of the Treasury, may prescribe. [39 Stat. L. 783.]

See the note to sec. 400 of this Act, *supra*, p. 287.

For the Act of Oct 22, 1914, ch. 331, mentioned in this paragraph, see 1916 Supp. Fed. Stat. Ann. 80; 4 Fed. Stat. Ann. (2d ed.) 122.

For the Res. of Dec. 17, 1915, No. 2, mentioned in this paragraph, see 1916 Supp. Fed. Stat. Ann. 110; 4 Fed. Stat. Ann. (2d ed.) 306.

[Sec. 402 continued] (b) **[Payment of tax — stamps — exceptions.]** That the taxes imposed by this section shall be paid by stamp on removal of the wines from the customhouse, winery, or other bonded place of

storage for consumption or sale, and every person hereafter producing, or having in his possession or under his control when this section takes effect, any wines subject to the tax imposed in this section shall file such notice, describing the premises on which such wines are produced, or stored; shall execute a bond in such form; shall make such inventories under oath; and shall, prior to sale or removal for consumption, affix to each cask or vessel containing such wine such marks, labels, or stamps as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may from time to time prescribe; and the premises described in such notice shall, for the purpose of this section, be regarded as bonded premises. But the provisions of this subdivision of this section, except as to payment of tax and the affixing of the required stamps or labels, shall not apply to wines held by retail dealers, as defined in section thirty-two hundred and forty-four of the Revised Statutes of the United States, nor, subject to regulations prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall the tax imposed by this section apply to wines produced for the family use of the producer thereof and not sold or otherwise removed from the place of manufacture and not exceeding in any case two hundred gallons per year. The Commissioner of Internal Revenue is hereby authorized to have prepared and issue such stamps denoting payment of the tax imposed by this section as he may deem requisite and necessary; and until such stamps are provided the taxes imposed by this section shall be assessed and collected as other taxes are assessed and collected, and all provisions of law relating to assessment and collection of taxes, so far as applicable, are hereby extended to the taxes imposed by this section. [39 Stat. L. 784.]

See the note to sec. 400 of this Act, *supra*, p. 287.

For R. S. sec. 3244, mentioned in this paragraph, see 3 Fed. Stat. Ann. 613; 3 Fed. Stat. Ann. (2d ed.) 1045.

[SEC. 402 continued] (c) [Withdrawal of brandy or spirits for fortification — tax.] That under such regulations and official supervision and upon the giving of such notices, entries, bonds, and other security as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may prescribe, any producer of wines defined under the provisions of this section or section four hundred and one of this Act, may withdraw from any fruit distillery or special bonded warehouse grape brandy, or wine spirits, for the fortification of such wines on the premises where actually made: *Provided*, That there shall be levied and assessed against the producer of such wines a tax of 10 cents per proof gallon of grape brandy or wine spirits so used by him in the fortification of such wines during the preceding month, which assessment shall be paid by him within six months from the date of notice thereof: *Provided further*, That nothing herein contained shall be construed as exempting any wines, cordials, liqueurs, or similar compounds from the payment of any tax provided for in this section. [39 Stat. L. 784.]

See the note to sec. 400 of this Act, *supra*, p. 287.

An additional tax was imposed on brandy or spirits withdrawn under this section by the Act of Oct. 3, 1917, ch. —, § 311, *infra*, p. 301.

[SEC. 402 (c) continued] [Use of wine spirits to fortify pure sweet wines — wine spirits and pure sweet wine defined — withdrawal of wine spirits for fortifying sweet wines — regulations, etc.—former Act amended.] That sections forty-two, forty-three, and forty-five of the Act of October first, eighteen hundred and ninety, as amended by section sixty-eight of the Act of August twenty-seventh, eighteen hundred and ninety-four, are further amended to read as follows:

“SEC. 42. That any producer of pure sweet wines may use in the preparation of such sweet wines, under such regulations and after the filing of such notices and bonds, together with the keeping of such records and the rendition of such reports as to materials and products as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may prescribe, wine spirits produced by any duly authorized distiller, and the Commissioner of Internal Revenue, in determining the liability of any distiller of wine spirits to assessment under section thirty-three hundred and nine of the Revised Statutes, is authorized to allow such distiller credit in his computations for the wine spirits withdrawn to be used in fortifying sweet wines under this Act.

“SEC. 43. That the wine spirits mentioned in section forty-two herein mentioned is the product resulting from the distillation of fermented grape juice, to which water may have been added prior to, during, or after fermentation, for the sole purpose of facilitating the fermentation and economical distillation thereof, and shall be held to include the product from grapes or their residues commonly known as grape brandy, and shall include commercial grape brandy which may have been colored with burnt sugar or caramel; and the pure sweet wine which may be fortified with wine spirits under the provisions of this Act is fermented or partially fermented grape juice only, with the usual cellar treatment, and shall contain no other substance whatever introduced before, at the time of, or after fermentation, except as herein expressly provided: *Provided*, That the addition of pure boiled or condensed grape must or pure crystallized cane or beet sugar, or pure dextrose sugar containing, respectively, not less than ninety-five per centum of actual sugar, calculated on a dry basis, or water, or any or all of them, to the pure grape juice before fermentation, or to the fermented product of such grape juice, or to both, prior to the fortification herein provided for, either for the purpose of perfecting sweet wines according to commercial standards or for mechanical purposes, shall not be excluded by the definition of pure sweet wine aforesaid: *Provided*, however, That the cane or beet sugar, or pure dextrose sugar added for sweetening purposes shall not be in excess of eleven per centum of the weight of the wine to be fortified: *And provided further*, That the addition of water herein authorized shall be under such regulations as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may from time to time prescribe: *Provided*, however, That records kept in accordance with such regulations as to the percentage of saccharine, acid, alcoholic, and added water content of the wine offered for fortification shall be open to inspection by any official of the Department of Agriculture thereto duly authorized by the Secretary of Agriculture; but in no case shall such wines to which water has been added be eligible for fortification under the provisions of this Act, where the same,

after fermentation and before fortification, have an alcoholic strength of less than five per centum of their volume.

"SEC. 45. That under such regulations and official supervision, and upon the execution of such entries and the giving of such bonds, bills of lading, and other security as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall prescribe, any producer of pure sweet wines as defined by this Act may withdraw wine spirits from any special bonded warehouse in original packages or from any registered distillery in any quantity not less than eighty wine gallons, and may use so much of the same as may be required by him under such regulations, and after the filing of such notices and bonds and the keeping of such records and the rendition of such reports as to materials and products and the disposition of the same as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall prescribe, in fortifying the pure sweet wines made by him, and for no other purpose, in accordance with the foregoing limitations and provisions; and the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, is authorized whenever he shall deem it to be necessary for the prevention of violations of this law to prescribe that wine spirits withdrawn under this section shall not be used to fortify wines except at a certain distance prescribed by him from any distillery, rectifying house, winery, or other establishment used for producing or storing distilled spirits, or for making or storing wines other than wines which are so fortified, and that in the building in which such fortification of wines is practiced no wines or spirits other than those permitted by this regulation shall be stored in any room or part of the building in which fortification of wines is practiced. The use of wine spirits for the fortification of sweet wines under this Act shall be under the immediate supervision of an officer of internal revenue, who shall make returns describing the kinds and quantities of wine so fortified, and shall affix such stamps and seals to the packages containing such wines as may be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury; and the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall provide by regulations the time within which wines so fortified with the wine spirits so withdrawn may be subject to inspection, and for final accounting for the use of such wine spirits and for rewarehousing or for payment of the tax on any portion of such wine spirits which remain not used in fortifying pure sweet wines." [39 Stat. L. 784.]

See the note to sec. 400 of this Act, *supra*, p. 287.

For the Act of Oct. 1, 1890, ch. 1244, §§ 42, 43 and 45, amended by this paragraph, see 3 Fed. Stat. Ann. 708, 709, 710; 4 Fed. Stat. Ann. (2d ed.) 99, 101. These sections had previously been amended by the Act of Oct. 22, 1914, ch. 331, § 2, but said Act was repealed by sec. 410 of this Act, *infra*, p. 380.

[SEC. 402 continued] (d) [Withdrawal of domestic wines for storage — limitation — tax when used as material by distiller.] That under such regulations and upon the execution of such notices, entries, bonds, and other security as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may prescribe, domestic wines subject to the tax imposed by this section may be removed from the winery where produced, free of tax, for storage on other bonded premises or from said

premises to other bonded premises: *Provided*, That not more than one such additional removal shall be allowed, or for exportation from the United States or for use as distilling material at any regularly registered distillery: *Provided, however*, That the distiller using any such wine as material shall, subject to the provisions of section thirty-three hundred and nine of the Revised Statutes of the United States, as amended, be held to pay the tax on the product of such wines as will include both the alcoholic strength therein produced by fermentation and that obtained from the brandy or wine spirits added to such wines at the time of fortification. [39 Stat. L. 786.]

See the note to sec. 400 of this Act, *supra*, p. 287.

For R. S. sec. 3309, mentioned in this paragraph, see 3 Fed. Stat. Ann. 676; 4 Fed. Stat. Ann. (2d ed.) 64.

[SEC. 402 continued] (e) [Tax on sparkling wines — champagne — artificially carbonated wine — liqueurs, cordials, etc. — tax paid under prior emergency act — stamps — collection.] That upon all domestic and imported sparkling wines, liqueurs, cordials, and similar compounds remaining in the hands of dealers when this section takes effect, or thereafter removed from the place of manufacture or storage for sale or consumption, there shall be levied and paid, by stamp, taxes as follows:

On each bottle or other container of champagne or sparkling wine, 3 cents on each one-half pint or fraction thereof.

On each bottle or other container of artificially carbonated wine, 1½ cents on each one-half pint or fraction thereof.

On each bottle or other container of liqueurs, cordials, or similar compounds, by whatever name sold or offered for sale, containing sweet wine, fortified with grape brandy under the provisions of paragraph (c) of this section, 1½ cents on each one-half pint or fraction thereof.

The taxes imposed by this section shall not apply to wines, liqueurs, or cordials on which the tax imposed by the Act approved October twenty-second, nineteen hundred and fourteen, entitled "An Act to increase the internal revenue, and for other purposes," and the joint resolution approved December seventeenth, nineteen hundred and fifteen, entitled "Joint resolution extending the provisions of the Act entitled 'An Act to increase the internal revenue, and for other purposes,' approved October twenty-second, nineteen hundred and fourteen, to December thirty-first, nineteen hundred and sixteen," has been paid by stamp.

The Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, is hereby authorized to have prepared suitable revenue stamps denoting the payment of the taxes imposed by this section; and all provisions of law relating to internal-revenue stamps, so far as applicable, are hereby extended to the taxes imposed by this section: *Provided*, That the collection of the tax herein prescribed on imported still wines, including vermouth, and sparkling wines, including champagne, and on imported liqueurs, cordials, and similar compounds, may be made within the discretion of the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, by assessment instead of by stamps. [39 Stat. L. 786.]

See the note to sec. 400 of this Act, *supra*, p. 287.

[SEC. 402 continued] (f) **[Evading tax — illegal recovery, rectifying, etc.—penalty — rectifying and blending permitted.]** That any person who shall evade or attempt to evade the tax imposed by this section, or any requirement of this section or regulation issued pursuant thereof, or who shall, otherwise than provided in this section, recover or attempt to recover any spirits from domestic or imported wine, or who shall rectify, mix, or compound with distilled spirits any domestic wines, other than in the manufacture of liqueurs, cordials, or similar compounds taxable under the provisions of this section, shall, on conviction, be punished for each such offense by a fine of not exceeding \$5,000, or imprisonment for not more than five years, or both, and all wines, spirits, liqueurs, cordials, or similar compounds as to which such violation occurs shall be forfeited to the United States. But the provision of this subdivision of this section and the provision of section thirty-two hundred and forty-four of the Revised Statutes of the United States, as amended, relating to rectification, or other internal-revenue laws of the United States, shall not be held to apply to or prohibit the mixing or blending of wines subject to tax under the provisions of this section with each other or with other wines for the sole purpose of perfecting such wines according to commercial standards: *Provided*, That nothing herein contained shall be construed as prohibiting the use of tax-paid grain or other ethyl alcohol in the fortification of sweet wines as defined in section fifty-three of this Act. [39 Stat. L. 787.]

See the note to sec. 400 of this Act, *supra*, p. 287.

For R. S. sec. 3244, mentioned in the text, see 3 Fed. Stat. Ann. 613; 3 Fed. Stat. Ann. (2d ed.) 1045.

The text paragraph mentions "section fifty-three of this Act" but the Act contains no section of that number.

[SEC. 402 continued] (g) **[Special meters, locks, seals, etc., for fruit distilleries — assignment of gaugers — pay, etc.]** That the Commissioner of Internal Revenue, by regulations to be approved by the Secretary of the Treasury, may require the use at each fruit distillery of such spirit meters, and such locks and seals to be affixed to fermenters, tanks, or other vessels and to such pipe connections as may in his judgment be necessary or expedient; and the said Commissioner is hereby authorized to assign to any such distillery and to each winery where wines are to be fortified such number of gaugers or storekeeper-gaugers in the capacity of gaugers as may be necessary for the proper supervision of the manufacture of brandy or the making or fortifying of wines subject to tax imposed by this section; and the compensation of such officers shall not exceed \$5 per diem while so assigned, together with their actual and necessary traveling expenses, and also a reasonable allowance for their board bills, to be fixed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, but not to exceed \$2.50 per diem for said board bills. [39 Stat. L. 787.]

See the note to sec. 400 of this Act, *supra*, p. 287.

[SEC. 402 continued] (h) **[Allowance for unavoidable loss.]** That the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, is hereby authorized to make such allowances for unavoidable loss of wines while on storage or during cellar treatment as in his judgment

may be just and proper, and to prepare all necessary regulations for carrying into effect the provisions of this section. [39 Stat. L. 787.]

See the note to sec. 400 of this Act, *supra*, p. 287.

[SEC. 402 continued] (i) [Surveys — basis of capacity — amount of water — R. S. sec. 3264 amended.] That the second paragraph of section thirty-two hundred and sixty-four, Revised Statutes of the United States of America, as amended by section five of the Act of March first, eighteen hundred and seventy-nine, and as further amended by the Act of Congress approved June twenty-second, nineteen hundred and ten, be amended so as to read as follows:

“In all surveys forty-five gallons of mash or beer brewed or fermented from grain shall represent not less than one bushel of grain, and seven gallons of mash or beer brewed or fermented from molasses shall represent not less than one gallon of molasses, except in distilleries operated on the sour mash principle, in which distilleries sixty gallons of beer brewed or fermented from grain shall represent not less than one bushel of grain, and except that in distilleries where the filtration-aeration process is used, with the approval of the Commissioner of Internal Revenue; that is, where the mash after it leaves the mash tub is passed through a filtering machine before it is run into the fermenting tub, and only the filtered liquor passes into the fermenting tub, there shall hereafter be no limitation upon the number of gallons of water which may be used in the process of mashing or filtration for fermentation; but the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, in order to protect the revenue, shall be authorized to prescribe by regulation, to be made by him, such character of survey as he may find suitable for distilleries using such filtration-aeration process. The provisions hereof relating to filtration-aeration process shall apply only to sweet-mash distilleries.” [39 Stat. L. 787.]

See the note to sec. 400 of this Act, *supra*, p. 287.

For R. S. sec. 3264, amended by this paragraph, see 3 Fed. Stat. Ann. 642; 4 Fed. Stat. Ann. (2d. ed.) 31.

SEC. 403. [Distilled spirits — exportation.] That under such regulations as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may prescribe, alcohol or other distilled spirits of a proof strength of not less than one hundred and eighty degrees intended for export free of tax may be drawn from receiving cisterns at any distillery, or from storage tanks in any distillery warehouse, for transfer to tanks or tank cars for export from the United States, and all provisions of existing law relating to the exportation of distilled spirits not inconsistent herewith shall apply to spirits removed for export under the provisions of this Act. [39 Stat. L. 788.]

See the note to sec. 400 of this Act, *supra*, p. 287.

SEC. 404. [Distillers of fruit brandy — exemptions — R. S. sec. 3255 amended.] That section thirty-two hundred and fifty-five of the Revised Statutes as amended by Act of June third, eighteen hundred and ninety-

six, and as further amended by Act of March second, nineteen hundred and eleven, be further amended so as to read as follows:

"**Sec. 3255.** The Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may exempt distillers of brandy made exclusively from apples, peaches, grapes, pears, pineapples, oranges, apricots, berries, plums, pawpaws, persimmons, prunes, figs, or cherries from any provision of this title relating to the manufacture of spirits, except as to the tax thereon, when in his judgment it may seem expedient to do so: *Provided*, That where, in manufacture of wine, artificial sweetening has been used the wine or the fruit pomace residuum may be used in the distillation of brandy, as such use shall not prevent the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, from exempting such distiller from any provision of this title relating to the manufacture of spirits, except as to the tax thereon, when in his judgment it may seem expedient to do so: *And provided further*, That the distillers mentioned in this section may add to not less than five hundred gallons (or ten barrels) of grape cheese not more than five hundred gallons of a sugar solution made from cane, beet, starch, or corn sugar, ninety-five per centum pure, such solution to have a saccharine strength of not to exceed ten per centum, and may ferment the resultant mixture on a winery or distillery premises, and such fermented product shall be regarded as distilling material." [39 Stat. L. 788.]

See the note to sec. 400 of this Act, *supra*, p. 287.

For R. S. sec. 3255, amended by this section, see 3 Fed. Stat. Ann. 634; 4 Fed. Stat. Ann. (2d ed.) 22.

SEC. 405. [Gin — exportation — tax.] That distilled spirits known commercially as gin of not less than eighty per centum proof may at any time within eight years after entry in bond at any distillery be bottled in bond at such distillery for export without the payment of tax, under such rules and regulations as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may prescribe. [39 Stat. L. 788.]

See the note to sec. 400 of this Act, *supra*, p. 287.

SEC. 406. [Withdrawal of liquor by brewer for bottling — payment of tax by cancelled stamps — R. S. sec. 3354 amended.] That section thirty-three hundred and fifty-four of the Revised Statutes of the United States as amended by the Act approved June eighteenth, eighteen hundred and ninety, be, and is hereby, amended to read as follows:

"**Sec. 3354.** Every person who withdraws any fermented liquor from any hogshead, barrel, keg, or other vessel upon which the proper stamp has not been affixed for the purpose of bottling the same, or who carries on or attempts to carry on the business of bottling fermented liquor in any brewery or other place in which fermented liquor is made, or upon any premises having communication with such brewery, or any warehouse, shall be liable to a fine of \$500, and the property used in such bottling or business shall be liable to forfeiture: *Provided, however*, That this section shall not be construed to prevent the withdrawal and transfer of unfer-

mented, partially fermented, or fermented liquors from any of the vats in any brewery by way of a pipe line or other conduit to another building or place for the sole purpose of bottling the same, such pipe line or conduit to be constructed and operated in such manner and with such cisterns, vats, tanks, valves, clocks, faucets, and gauges, or other utensils or apparatus, either on the premises of the brewery or the bottling house, and with such changes of or additions thereto, and such locks, seals, or other fastenings, and under such rules and regulations as shall be from time to time prescribed by the Commissioner of Internal Revenue, subject to the approval of the Secretary of the Treasury, and all locks and seals prescribed shall be provided by the Commissioner of Internal Revenue at the expense of the United States: *Provided further*, That the tax imposed in section thirty-three hundred and thirty-nine of the Revised Statutes of the United States shall be paid on all fermented liquor removed from a brewery to a bottling house by means of a pipe or conduit, at the time of such removal, by the cancellation and defacement, by the collector of the district or his deputy, in the presence of the brewer, of the number of stamps denoting the tax on the fermented liquor thus removed. The stamps thus canceled and defaced shall be disposed of and accounted for in the manner directed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury. And any violation of the rules and regulations hereafter prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, in pursuance of these provisions, shall be subject to the penalties above provided by this section. Every owner, agent, or superintendent of any brewery or bottling house, who removes, or connives at the removal of, any fermented liquor through a pipe line or conduit, without payment of the tax thereon, or who attempts in any manner to defraud the revenue as above, shall forfeit all the liquors made by and for him, and all the vessels, utensils, and apparatus used in making the same." [39 Stat. L. 789.]

See the note to sec. 400 of this Act, *supra*, p. 287.

For R. S. sec. 3354, amended by this section, see 3 Fed. Stat. Ann. 721; 4 Fed. Stat. Ann. (2d ed.) 133.

For R. S. sec. 3330, mentioned in this section, see 3 Fed. Stat. Ann. 713; 4 Fed. Stat. Ann. (2d ed.) 126.

SEC. 300. [Distilled spirits—amount of tax—perfumes containing distilled spirits.] That on and after the passage of this Act there shall be levied and collected on all distilled spirits in bond at that time or that have been or that may be then or thereafter produced in or imported into the United States, except such distilled spirits as are subject to the tax provided in section three hundred and three, in addition to the tax now imposed by law, a tax of \$1.10 (or, if withdrawn for beverage purposes or for use in the manufacture or production of any article used or intended for use as a beverage, a tax of \$2.10) on each proof gallon, or wine gallon when below proof, and a proportionate tax at a like rate on all fractional parts of such proof or wine gallon, to be paid by the distiller or importer when withdrawn, and collected under the provisions of existing law.

That in addition to the tax under existing law there shall be levied and

collected upon all perfumes hereafter imported into the United States containing distilled spirits, a tax of \$1.10 per wine gallon, and a proportionate tax at a like rate on all fractional parts of such wine gallon. Such tax shall be collected by the collector of customs and deposited as internal-revenue collections, under such rules and regulations as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may prescribe. [— *Stat. L.* —.]

The foregoing sec. 300 and the following secs. 301-315 constitute "Title III — War Tax on Beverages" of the Act of Oct. 3, 1917, ch. —, entitled "An Act To provide revenue to defray war expenses and for other purposes."

General administrative provisions of this Act, which affect these sections, and should be read in connection herewith, are given under subdivision XV of this title, *infra*, p. 374.

SEC. 301. [Importation of distilled spirits — restriction on.] That no distilled spirits produced after the passage of this Act shall be imported into the United States from any foreign country, or from the West Indian Islands recently acquired from Denmark (unless produced from products the growth of such islands, and not then into any State or Territory or District of the United States in which the manufacture or sale of intoxicating liquor is prohibited), or from Porto Rico, or the Philippine Islands. Under such rules, regulations, and bonds as the Secretary of the Treasury may prescribe, the provisions of this section shall not apply to distilled spirits imported for other than (1) beverage purposes or (2) use in the manufacture or production of any article used or intended for use as a beverage. [— *Stat. L.* —.]

See the note to the preceding sec. 300 of this Act.

SEC. 302. [Withdrawal of spirits from distilleries.] That at registered distilleries producing alcohol, or other high-proof spirits, packages may be filled with such spirits reduced to not less than one hundred proof from the receiving cisterns and tax paid without being entered into bonded warehouse. Such spirits may be also transferred from the receiving cisterns at such distilleries, by means of pipe lines, direct to storage tanks in the bonded warehouse and may be warehoused in such storage tanks. Such spirits may be also transferred in tanks or tank cars to general bonded warehouses for storage therein, either in storage tanks in such warehouses or in the tanks in which they were transferred. Such spirits may also be transferred after tax payment from receiving cisterns or warehouse storage tanks to tanks or tank cars and may be transported in such tanks or tank cars to the premises of rectifiers of spirits. The Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, is hereby empowered to prescribe all necessary regulations relating to the drawing off, transferring, gauging, storing and transporting of such spirits; the records to be kept and returns to be made; the size and kind of packages and tanks to be used; the marking, branding, numbering and stamping of such packages and tanks; the kinds of stamps, if any, to be used; and the time and manner of paying the tax; the kind of bond and the penal sum of same. The tax prescribed by law must be paid before such spirits are removed from the distillery premises, or from general

bonded warehouse in the case of spirits transferred thereto, except as otherwise provided by law.

Under such regulations as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may prescribe, distilled spirits may hereafter be drawn from receiving cisterns and deposited in distillery warehouses without having affixed to the packages containing the same distillery warehouse stamps, and such packages, when so deposited in warehouse, may be withdrawn therefrom on the original gauge where the same have remained in such warehouse for a period not exceeding thirty days from the date of deposit.

Under such regulations as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may prescribe, the manufacture, warehousing, withdrawal, and shipment, under the provisions of existing law, of ethyl alcohol for other than (1) beverage purposes or (2) use in the manufacture or production of any article used or intended for use as a beverage, and denatured alcohol, may be exempted from the provisions of section thirty-two hundred and eighty-three, Revised Statutes of the United States.

Under such regulations as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may prescribe, manufacturers of ethyl alcohol for other than beverage purposes may be granted permission under the provisions of section thirty-two hundred and eighty-five, Revised Statutes of the United States, to fill fermenting tub in a sweet-mash distillery not oftener than once in forty-eight hours. [— *Stat. L.* —.]

See the note to sec. 300 of this Act, *supra*, p. 296.

For R. S. secs. 3283, 3285, mentioned in this section, see 3 Fed. Stat. Ann. 655, 656; 3 Fed. Stat. Ann. (2d ed.) 152, 154.

SEC. 303. [Distilled spirits held by retailer — tax — amount.] That upon all distilled spirits produced in or imported into the United States upon which the tax now imposed by law has been paid, and which, on the day this Act is passed, are held by a retailer in a quantity in excess of fifty gallons in the aggregate, or by any other person, corporation, partnership, or association in any quantity, and which are intended for sale, there shall be levied, assessed, collected, and paid a tax of \$1.10 (or, if intended for sale for beverage purposes or for use in the manufacture or production of any article used or intended for use as a beverage, a tax of \$2.10) on each proof gallon, and a proportionate tax at a like rate on all fractional parts of such proof gallon: *Provided*, That the tax on such distilled spirits in the custody of a court of bankruptcy in insolvency proceedings on June first, nineteen hundred and seventeen, shall be paid by the person to whom the court delivers such distilled spirits at the time of such delivery, to the extent that the amount thus delivered exceeds the fifty gallons hereinbefore provided. [— *Stat. L.* —.]

See the note to sec. 300 of this Act, *supra*, p. 296.

SEC. 304. [Additional tax on spirits hereafter rectified — blending.] That in addition to the tax now imposed or imposed by this Act on distilled spirits there shall be levied, assessed, collected, and paid a tax of 15 cents

on each proof gallon and a proportionate tax at a like rate on all fractional parts of such proof gallon on all distilled spirits or wines hereafter rectified, purified, or refined in such manner, and on all mixtures hereafter produced in such manner, that the person so rectifying, purifying, refining, or mixing the same is a rectifier within the meaning of section thirty-two hundred and forty-four, Revised Statutes, as amended, and on all such articles in the possession of the rectifier on the day this Act is passed: *Provided*, That this tax shall not apply to gin produced by the redistillation of a pure spirit over juniper berries and other aromatics.

When the process of rectification is completed and the tax prescribed by this section has been paid, it shall be unlawful for the rectifier or other dealer to reduce in proof or increase in volume such spirits or wine by the addition of water or other substance; nothing herein contained shall, however, prevent a rectifier from using again in the process of rectification spirits already rectified and upon which the tax has theretofore been paid.

The tax imposed by this section shall not attach to cordials or liquors on which a tax is imposed and paid under the Act entitled "An Act to increase the revenue, and for other purposes," approved September eighth, nineteen hundred and sixteen, nor to the mixing and blending of wines, where such blending is for the sole purpose of perfecting such wines according to commercial standards, nor to blends made exclusively of two or more pure straight whiskies aged in wood for a period not less than four years and without the addition of coloring or flavoring matter or any other substance than pure water and if not reduced below ninety proof: *Provided*, That such blended whiskies shall be exempt from tax under this section only when compounded under the immediate supervision of a revenue officer, in such tanks and under such conditions and supervision as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may prescribe.

All distilled spirits taxable under this section shall be subject to uniform regulations concerning the use thereof in the manufacture, blending, compounding, mixing, marking, branding, and sale of whiskey and rectified spirits, and no discrimination whatsoever shall be made by reason of a difference in the character of the material from which the same may have been produced.

The business of a rectifier of spirits shall be carried on, and the tax on rectified spirits shall be paid, under such rules, regulations, and bonds as may be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury.

Any person violating any of the provisions of this section shall be deemed to be guilty of a misdemeanor and, upon conviction, shall be fined not more than \$1,000 or imprisoned not more than two years. He shall, in addition, be liable to double the tax evaded together with the tax, to be collected by assessment or on any bond given. [— *Stat. L.* —.]

See the note to sec. 300 of this Act, *supra*, p. 296.

For R. S. sec. 3244, mentioned in this section, see 3 Fed. Stat. Ann. 613; 3 Fed. Stat. Ann. (2d ed.) 1045.

The provisions of the Act of Sept. 8, 1916, ch. 463, to which reference is made in this section, are given within this subdivision, *supra*, p. 287.

SEC. 305. [Stamps — collectors when not to furnish — discontinuance.] That hereafter collectors of internal revenue shall not furnish wholesale liquor dealer's stamps in lieu of and in exchange for stamps for rectified spirits unless the package covered by stamp for rectified spirits is to be broken into smaller packages.

The Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, is authorized to discontinue the use of the following stamps whenever in his judgment the interests of the Government will be subserved thereby: Distillery warehouse, special bonded warehouse, special bonded rewarehouse, general bonded warehouse, general bonded retransfer, transfer brandy, export tobacco, export cigars, export oleomargarine and export fermented liquor stamps. [— *Stat. L.* —.]

See the note to sec. 300 of this Act, *supra*, p. 296.

SEC. 306. [Distilleries, breweries and rectifying houses — installation of meters, etc.] That the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, is hereby authorized to require at distilleries, breweries, rectifying houses, and wherever else in his judgment such action may be deemed advisable, the installation of meters, tanks, pipes, or any other apparatus for the purpose of protecting the revenue, and such meters, tanks, and pipes and all necessary labor incident thereto shall be at the expense of the person, corporation, partnership, or association on whose premises the installation is required. Any such person, corporation, partnership, or association refusing or neglecting to install such apparatus when so required by the commissioner shall not be permitted to conduct business on such premises. [— *Stat. L.* —.]

See the note to sec. 300 of this Act, *supra*, p. 296.

SEC. 307. [Beer, ale, porter, etc.— amount of tax.] That on and after the passage of this Act there shall be levied and collected on all beer, lager beer, ale, porter, and other similar fermented liquor, containing one-half per centum or more of alcohol, brewed or manufactured and sold, or stored in warehouse, or removed for consumption or sale, within the United States, by whatever name such liquors may be called, in addition to the tax now imposed by law, a tax of \$1.50 for every barrel containing not more than thirty-one gallons, and at a like rate for any other quantity or for the fractional parts of a barrel authorized and defined by law. [— *Stat. L.* —.]

See the note to sec. 300 of this Act, *supra*, p. 296.

SEC. 308. [Fermented liquors — removal from brewery to distillery — tax.] That from and after the passage of this Act taxable fermented liquors may be conveyed without payment of tax from the brewery premises where produced to a contiguous industrial distillery of either class established under the Act of October third, nineteen hundred and thirteen, to be used as distilling material, and the residue from such distillation, containing less than one-half of one per centum of alcohol by volume, which is to be used in making beverages, may be manipulated by cooling, flavoring, carbonating, settling, and filtering on the distillery premises or elsewhere.

The removal of the taxable fermented liquor from the brewery to the

distillery and the operation of the distillery and removal of the residue therefrom shall be under the supervision of such officer or officers as the Commissioner of Internal Revenue shall deem proper, and the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, is hereby authorized to make such regulations from time to time as may be necessary to give force and effect to this section and to safeguard the revenue. [— *Stat. L.* —.]

See the note to sec. 300 of this Act, *supra*, p. 296.

For the Act of Oct. 3, 1913, ch. 16, § IV, N, subsec. 2, to which reference is made in the text, see 1914 Supp. Fed. Stat. Ann. 200; 4 Fed. Stat. Ann. (2d ed.) 121.

SEC. 309. [Still wines, etc.—amount of tax.] That upon all still wines, including vermouth, and upon all champagne and other sparkling wines, liqueurs, cordials, artificial or imitation wines or compounds sold as wine, produced in or imported into the United States, and hereafter removed from the custom-house, place of manufacture, or from bonded premises for sale or consumption, there shall be levied and collected, in addition to the tax now imposed by law upon such articles, a tax equal to such tax, to be levied, collected, and paid under the provisions of existing law. [— *Stat. L.* —.]

See the note to sec. 300 of this Act, *supra*, p. 296.

SEC. 310. [Still wines, etc.—additional tax.] That upon all articles specified in section three hundred and nine upon which the tax now imposed by law has been paid and which are on the day this Act is passed held in excess of twenty-five gallons in the aggregate of such articles and intended for sale, there shall be levied, collected, and paid a tax equal to the tax imposed by such section. [— *Stat. L.* —.]

See the note to sec. 300 of this Act, *supra*, p. 296.

SEC. 311. [Grape brandy or wine spirits — amount of tax.] That upon all grape brandy or wine spirits withdrawn by a producer of wines from any fruit distillery or special bonded warehouse under subdivision (c) of section four hundred and two of the Act entitled "An Act to increase the revenue, and for other purposes," approved September eighth, nineteen hundred and sixteen, there shall be levied, assessed, collected, and paid in addition to the tax therein imposed, a tax equal to double such tax, to be assessed, collected, and paid under the provisions of existing law. [— *Stat. L.* —.]

See the note to sec. 300 of this Act, *supra*, p. 296.

The Act of Sept. 8, 1916, ch. 463, § 402, subdivision (c), mentioned in the text, is given *supra*, p. 289.

SEC. 312. [Sweet wines — additional tax.] That upon all sweet wines held for sale by the producer thereof upon the day this Act is passed there shall be levied, assessed, collected, and paid an additional tax equivalent to 10 cents per proof gallon upon the grape brandy or wine spirits used in the fortification of such wine, and an additional tax of 20 cents per proof gallon shall be levied, assessed, collected, and paid upon all grape brandy or wine spirits withdrawn by a producer of sweet wines for the purpose

of fortifying such wines and not so used prior to the passage of this Act. [— *Stat. L.* —.]

See the note to sec. 300 of this Act, *supra*, p. 296.

SEC. 313. [Soft drinks — grape juice — mineral water — amount of tax.] That there shall be levied, assessed, collected, and paid —

(a) Upon all prepared sirups or extracts (intended for use in the manufacture or production of beverages, commonly known as soft drinks, by soda fountains, bottling establishments, and other similar places) sold by the manufacturer, producer, or importer thereof, if so sold for not more than \$1.30 per gallon, a tax of 5 cents per gallon; if so sold for more than \$1.30 and not more than \$2 per gallon, a tax of 8 cents per gallon; if so sold for more than \$2 and not more than \$3 per gallon, a tax of 10 cents per gallon; if so sold for more than \$3 and not more than \$4 per gallon, a tax of 15 cents per gallon; and if so sold for more than \$4 per gallon, a tax of 20 cents per gallon; and

(b) Upon all unfermented grape juice, soft drinks, or artificial mineral waters (not carbonated), and fermented liquors containing less than one-half per centum of alcohol, sold by the manufacturer, producer, or importer thereof, in bottles or other closed containers, and upon all ginger ale, root beer, sarsaparilla, pop, and other carbonated waters or beverages, manufactured and sold by the manufacturer, producer, or importer of the carbonic acid gas used in carbonating the same, a tax of 1 cent per gallon; and

(c) Upon all natural mineral waters or table waters, sold by the producer, bottler, or importer thereof, in bottles or other closed containers, at over 10 cents per gallon, a tax of 1 cent per gallon. [— *Stat. L.* —.]

See the note to sec. 300 of this Act, *supra*, p. 296.

SEC. 314. [Monthly returns by manufacturer, etc., of soft drinks.] That each such manufacturer, producer, bottler, or importer shall make monthly returns under oath to the collector of internal revenue for the district in which is located the principal place of business, containing such information necessary for the assessment of the tax, and at such times and in such manner, as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may by regulation prescribe. [— *Stat. L.* —.]

See the note to sec. 300 of this Act, *supra*, p. 296.

SEC. 315. [Carbonic acid gas — amount of tax.] That upon all carbonic acid gas in drums or other containers (intended for use in the manufacture or production of carbonated water or other drinks) sold by the manufacturer, producer, or importer thereof, there shall be levied, assessed, collected, and paid a tax of 5 cents per pound. Such tax shall be paid by the purchaser to the vendor thereof and shall be collected, returned, and paid to the United States by such vendor in the same manner as provided in section five hundred and three. [— *Stat. L.* —.]

See the note to sec. 300 of this Act, *supra*, p. 296.

Joint Resolution Authorizing and directing the Secretary of the Treasury to permit the entry of distilled spirits into bonded warehouses under bond, conditioned for the export of such distilled spirits to some foreign country within one year from the date of entry into the United States.

[*Res. of Oct. 6, 1917, No. —, — Stat. L. —.*]

[**Distilled spirits — shipments from foreign countries — entry into bonded warehouses.**] That the Secretary of the Treasury be, and he is hereby, authorized and directed to permit the entry of distilled spirits shipped from any foreign country to the United States prior to September first, nineteen hundred and seventeen, into bonded warehouses in the United States, under bond to be given by the importer of such distilled spirits, conditioned for the export of such goods to some foreign country within the period of one year from and after the entry thereof into the United States. [*— Stat. L. —.*]

V. CIGARS, TOBACCO AND MANUFACTURERS THEREOF

SEC. 400. [Cigars and cigarettes — amount of tax — “retail” defined.] That upon cigars and cigarettes, which shall be manufactured and sold, or removed for consumption or sale, there shall be levied and collected, in addition to the taxes now imposed by existing law, the following taxes, to be paid by the manufacturer or importer thereof: (a) on cigars of all descriptions made of tobacco, or any substitute therefor, and weighing not more than three pounds per thousand, 25 cents per thousand; (b) on cigars made of tobacco, or any substitute therefor, and weighing more than three pounds per thousand, if manufactured or imported to retail at 4 cents or more each, and not more than 7 cents each, \$1 per thousand; (c) if manufactured or imported to retail at more than 7 cents each and not more than 15 cents each, \$3 per thousand; (d) if manufactured or imported to retail at more than 15 cents each and not more than 20 cents each, \$5 per thousand; (e) if manufactured or imported to retail at more than 20 cents each, \$7 per thousand: *Provided*, That the word “retail” as used in this section shall mean the ordinary retail price of a single cigar, and that the Commissioner of Internal Revenue may, by regulation, require the manufacturer or importer to affix to each box or container a conspicuous label indicating by letter the clause of this section under which the cigars therein contained have been tax-paid, which must correspond with the tax-paid stamp on said box or container; (f) on cigarettes made of tobacco, or any substitute therefor, made in or imported into the United States, and weighing not more than three pounds per thousand, 80 cents per thousand; weighing more than three pounds per thousand, \$1.20 per thousand.

Every manufacturer of cigarettes (including small cigars weighing not more than three pounds per thousand) shall put up all the cigarettes and such small cigars that he manufactures or has manufactured for him, and sells or removes for consumption or use in packages or parcels containing five, eight, ten, twelve, fifteen, sixteen, twenty, twenty-four, forty, fifty,

eighty or one hundred cigarettes each, and shall securely affix to each of said packages or parcels a suitable stamp denoting the tax thereon and shall properly cancel the same prior to such sale or removal for consumption or use under such regulations as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall prescribe; and all cigarettes imported from a foreign country shall be packed, stamped, and the stamps canceled in a like manner, in addition to the import stamp indicating inspection of the custom-house before they are withdrawn therefrom. [— *Stat. L.* —.]

The foregoing sec. 400 and the following secs. 401–404 constitute Title IV—“War Tax on Cigars, Tobacco, and Manufacturers Thereof” of the Act of Oct. 3, 1917, ch. —, entitled “An Act To provide revenue to defray war expenses, and for other purposes.” General administrative provisions of this Act, which affect these sections, and should be read in connection herewith, are given under subdivision XV of this title, *infra*, p. 374.

SEC. 401. [Tobacco and snuff — amount of tax — how put up.] That upon all tobacco and snuff hereafter manufactured and sold, or removed for consumption or use, there shall be levied and collected, in addition to the tax now imposed by law upon such articles, a tax of 5 cents per pound, to be levied, collected, and paid under the provisions of existing law.

In addition to the packages provided for under existing law, manufactured tobacco and snuff may be put up and prepared by the manufacturer for sale or consumption, in packages of the following description: Packages containing one-eighth, three-eighths, five-eighths, seven-eighths, one and one-eighth, one and three-eighths, one and five-eighths, one and seven-eighths, and five ounces. [— *Stat. L.* —.]

See the notes to the preceding sec. 400 of this Act.

SEC. 402. [Certain sections of title when effective.] That sections four hundred, four hundred and one, and four hundred and four, shall take effect thirty days after the passage of this Act: *Provided*, That after the passage of this Act and before the expiration of the aforesaid thirty days, cigarettes and manufactured tobacco and snuff may be put up in the packages now provided for by law or in the packages provided for in sections four hundred and four hundred and one. [— *Stat. L.* —.]

See the notes to sec. 400 of this Act, *supra*, p. 303.

SEC. 403. [Manufactured tobacco, etc., removed from factory or custom-house prior to Act.] That there shall also be levied and collected, upon all manufactured tobacco and snuff in excess of one hundred pounds or upon cigars or cigarettes in excess of one thousand, which were manufactured or imported, and removed from factory or custom-house prior to the passage of this Act, bearing tax-paid stamps affixed to such articles for the payment of the taxes thereon, and which are, on the day after this Act is passed, held and intended for sale by any person, corporation, partnership, or association, and upon all manufactured tobacco, snuff, cigars or cigarettes, removed from factory or customs house after the passage of this Act but prior to the time when the tax imposed by section four hundred or section four hundred and one upon such articles takes effect, an additional tax

equal to one-half the tax imposed by such sections upon such articles. [— *Stat. L.* —.]

See the notes to sec. 400 of this Act, *supra*, p. 303.

SEC. 404. [Cigarette paper — amount of tax.] That there shall be levied, assessed, and collected upon cigarette paper made up into packages, books, sets, or tubes, made up in or imported into the United States and intended for use by the smoker in making cigarettes the following taxes: On each package, book, or set, containing more than twenty-five but not more than fifty papers, one-half of 1 cent; containing more than fifty but not more than one hundred papers, 1 cent; containing more than one hundred papers, 1 cent for each one hundred papers or fractional part thereof; and upon tubes, 2 cents for each one hundred tubes or fractional part thereof. [— *Stat. L.* —.]

See the notes to sec. 400 of this Act, *supra*, p. 303.

VI. ESTATE TAX

SEC. 200. [Definitions — “ person ” — “ United States ” — “ executor ” — “ collector.”] That when used in this title —

The term “ person ” includes partnerships, corporations, and associations;

The term “ United States ” means only the States, the Territories of Alaska and Hawaii, and the District of Columbia;

The term “ executor ” means the executor or administrator of the decedent, or, if there is no executor or administrator, any person who takes possession of any property of the decedent; and

The term “ collector ” means the collector of internal revenue of the district in which was the domicile of the decedent at the time of his death, or, if there was no such domicile in the United States, then the collector of the district in which is situated the part of the gross estate of the decedent in the United States, or, if such part of the gross estate is situated in more than one district, then the collector of internal revenue at Baltimore, Maryland. [39 *Stat. L.* 777.]

The foregoing sec. 200 and the following secs. 201-212 constitute “ Title II — Estate Tax ” of the Act of Sept. 8, 1916, ch. 463, entitled “ An Act To increase the revenue and for other purposes. ” General administrative provisions of this Act, which affect these sections, and should be read in connection herewith, are given under subdivision XV of this title, *infra*, p. 374.

SEC. 201 [Amount of tax.] That a tax (hereinafter in this title referred to as the tax), equal to the following percentages of the value of the net estate to be determined as provided in section two hundred and three, is hereby imposed upon the transfer of the net estate of every decedent dying after the passage of this Act, whether a resident or nonresident of the United States:

One and one-half per centum of the amount of such net estate not in excess of \$50,000;

Three per centum of the amount by which such net estate exceeds \$50 000 and does not exceed \$150 000;

Four and one-half per centum of the amount by which such net estate exceeds \$150,000 and does not exceed \$250,000;

Six per centum of the amount by which such net estate exceeds \$250,000 and does not exceed \$450,000;

Seven and one-half per centum of the amount by which such net estate exceeds \$450,000 and does not exceed \$1,000,000;

Nine per centum of the amount by which such net estate exceeds \$1,000 000 and does not exceed \$2 000,000;

Ten and one-half per centum of the amount by which such net estate exceeds \$2,000,000 and does not exceed \$3,000 000;

Twelve per centum of the amount by which such net estate exceeds \$3,000,000 and does not exceed \$4,000,000;

Thirteen and one-half per centum of the amount by which such net estate exceeds \$4,000,000 and does not exceed \$5 000,000; and

Fifteen per centum of the amount by which such net estate exceeds \$5,000,000. [39 Stat. L. 777, as amended by 39 Stat. L. 1002.]

See the notes to the preceding sec. 200 of this Act.

This section was amended to read as here given by the Act of March 3, 1917, ch. 159, title III., sec. 300. As originally enacted it was as follows:

"SEC. 201. That a tax (hereinafter in this title referred to as the tax), equal to the following percentages of the value of the net estate to be determined as provided in section two hundred and three, is hereby imposed upon the transfer of the net estate of every decedent dying after the passage of this Act, whether a resident or nonresident of the United States:

One per centum of the amount of such net estate not in excess of \$50,000;

Two per centum of the amount by which such net estate exceeds \$50,000 and does not exceed \$150,000;

Three per centum of the amount by which such net estate exceeds \$150,000 and does not exceed \$250,000;

Four per centum of the amount by which such net estate exceeds \$250,000 and does not exceed \$450,000;

Five per centum of the amount by which such net estate exceeds \$450,000 and does not exceed \$1,000,000;

Six per centum of the amount by which such net estate exceeds \$1,000,000 and does not [not] exceed \$2,000,000;

Seven per centum of the amount by which such net estate exceeds \$2,000,000 and does not exceed \$3,000,000;

Eight per centum of the amount by which such net estate exceeds \$3,000,000 and does not exceed \$4,000,000;

Nine per centum of the amount by which such net estate exceeds \$4,000,000 and does not exceed \$5,000,000; and

Ten per centum of the amount by which such net estate exceeds \$5,000,000."

A tax in addition to that imposed by this section, was imposed on the transfer of the net estates of decedents by the Act of Oct. 3, 1917, ch. —, sec. 900, *infra*, p. 311.

See the Act of March 3, 1917, ch. 159, sec. 301, *infra*, p. 310.

SEC. 202. [Value of gross estate — determination.] That the value of the gross estate of the decedent shall be determined by including the value at the time of his death of all property, real or personal, tangible or intangible, wherever situated:

(a) To the extent of the interest therein of the decedent at the time of his death which after his death is subject to the payment of the charges against his estate and the expenses of its administration and is subject to distribution as part of his estate.

(b) To the extent of any interest therein of which the decedent has at any

time made a transfer, or with respect to which he has created a trust, in contemplation of or intended to take effect in possession or enjoyment at or after his death, except in case of a bona fide sale for a fair consideration in money or money's worth. Any transfer of a material part of his property in the nature of a final disposition or distribution thereof, made by the decedent within two years prior to his death without such a consideration, shall, unless shown to the contrary, be deemed to have been made in contemplation of death within the meaning of this title; and

(c) To the extent of the interest therein held jointly or as tenants in the entirety by the decedent and any other person, or deposited in banks or other institutions in their joint names and payable to either or the survivor, except such part thereof as may be shown to have originally belonged to such other person and never to have belonged to the decedent.

For the purpose of this title stock in a domestic corporation owned and held by a nonresident decedent shall be deemed property within the United States, and any property of which the decedent has made a transfer or with respect to which he has created a trust, within the meaning of subdivision (b) of this section, shall be deemed to be situated in the United States, if so situated either at the time of the transfer or the creation of the trust, or at the time of the decedent's death. [39 Stat. L. 777.]

See the notes to sec. 200 of this Act, *supra*, p. 305.

The transfer tax under the state law must be fixed without deduction by the executors, from the gross estate, of the	estimated tax under this War Revenue Act of 1916. Matter of Bierstadt, (1917) 178 App. Div. 836, 166 N. Y. S. 168.
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SEC. 203. [Value of net estate — determination.] That for the purpose of the tax the value of the net estate shall be determined —

(a) In the case of a resident, by deducting from the value of the gross estate —

(1) Such amounts for funeral expenses, administration expenses, claims against the estate, unpaid mortgages, losses incurred during the settlement of the estate arising from fires, storms, shipwreck, or other casualty, and from theft, when such losses are not compensated for by insurance or otherwise, support during the settlement of the estate of those dependent upon the decedent, and such other charges against the estate, as are allowed by the laws of the jurisdiction, whether within or without the United States, under which the estate is being administered; and

(2) An exemption of \$50,000;

(b) In the case of a nonresident, by deducting from the value of that part of his gross estate which at the time of his death is situated in the United States that proportion of the deductions specified in paragraph (1) of subdivision (a) of this section which the value of such part bears to the value of his entire gross estate, wherever situated. But no deductions shall be allowed in the case of a nonresident unless the executor includes in the return required to be filed under section two hundred and five the value at the time of his death of that part of the gross estate of the nonresident not situated in the United States. [39 Stat. L. 778.]

See the notes to sec. 200 of this Act, *supra*, p. 305.

SEC. 204. [Payment of tax — discount — interest.] That the tax shall be due one year after the decedent's death. If the tax is paid before it is due a discount at the rate of five per centum per annum, calculated from the time payment is made to the date when the tax is due, shall be deducted. If the tax is not paid within ninety days after it is due interest at the rate of ten per centum per annum from the time of the decedent's death shall be added as part of the tax, unless because of claims against the estate, necessary litigation, or other unavoidable delay the collector finds that the tax can not be determined, in which case the interest shall be at the rate of six per centum per annum from the time of the decedent's death until the cause of such delay is removed, and thereafter at the rate of ten per centum per annum. Litigation to defeat the payment of the tax shall not be deemed necessary litigation. [39 Stat. L. 778.]

See the notes to sec. 200 of this Act, *supra*, p. 305.

SEC. 205. [Duty of executors — notice — return — assessment of tax.] That the executor, within thirty days after qualifying as such, or after coming into possession of any property of the decedent, whichever event first occurs, shall give written notice thereof to the collector. The executor, shall also, at such times and in such manner as may be required by the regulations made under this title, file with the collector a return under oath in duplicate, setting forth (a) the value of the gross estate of the decedent at the time of his death, or, in case of a nonresident, of that part of his gross estate situated in the United States; (b) the deductions allowed under section two hundred and three; (c) the value of the net estate of the decedent as defined in section two hundred and three; and (d) the tax paid or payable thereon; or such part of such information as may at the time be ascertainable and such supplemental data as may be necessary to establish the correct tax.

Return shall be made in all cases of estates subject to the tax or where the gross estate at the death of the decedent exceeds \$60,000, and in the case of the estate of every nonresident any part of whose gross estate is situated in the United States. If the executor is unable to make a complete return as to any part of the gross estate of the decedent, he shall include in his return a description of such part and the name of every person holding a legal or beneficial interest therein, and upon notice from the collector such person shall in like manner make a return as to such part of the gross estate. The Commissioner of Internal Revenue shall make all assessments of the tax under the authority of existing administrative special and general provisions of law relating to the assessment and collection of taxes. [39 Stat. L. 778.]

See the notes to sec. 200 of this Act, *supra*, p. 305.

SEC. 206. [Return by collector.] That if no administration is granted upon the estate of a decedent, or if no return is filed as provided in section two hundred and five, or if a return contains a false or incorrect statement of a material fact, the collector or deputy collector shall make a return and the Commissioner of Internal Revenue shall assess the tax thereon. [39 Stat. L. 779.]

See the notes to sec. 200 of this Act, *supra*, p. 305.

SEC. 207. [Payment of tax — overpayment — refund — underpayment — interest.] That the executor shall pay the tax to the collector or deputy collector. If for any reason the amount of the tax can not be determined, the payment of a sum of money sufficient, in the opinion of the collector, to discharge the tax shall be deemed payment in full of the tax, except as in this section otherwise provided. If the amount so paid exceeds the amount of the tax as finally determined, the Commissioner of Internal Revenue shall refund such excess to the executor. If the amount of the tax as finally determined exceeds the amount so paid the commissioner shall notify the executor of the amount of such excess. From the time of such notification to the time of the final payment of such excess part of the tax, interest shall be added thereto at the rate of ten per centum per annum, and the amount of such excess shall be a lien upon the entire gross estate, except such part thereof as may have been sold to a bona fide purchaser for a fair consideration in money or money's worth.

The collector shall grant to the person paying the tax duplicate receipts, either of which shall be sufficient evidence of such payment, and shall entitle the executor to be credited and allowed the amount thereof by any court having jurisdiction to audit or settle his accounts. [39 Stat. L. 779.]

See the notes to sec. 200 of this Act, *supra*, p. 305.

SEC. 208. [Subjecting property of decedent to sale to satisfy tax.] That if the tax herein imposed is not paid within sixty days after it is due, the collector shall, unless there is reasonable cause for further delay, commence appropriate proceedings in any court of the United States, in the name of the United States, to subject the property of the decedent to be sold under the judgment or decree of the court. From the proceeds of such sale the amount of the tax, together with the costs and expenses of every description to be allowed by the court, shall be first paid, and the balance shall be deposited according to the order of the court, to be paid under its direction to the person entitled thereto. If the tax or any part thereof is paid by, or collected out of that part of the estate passing to or in the possession of, any person other than the executor in his capacity as such, such person shall be entitled to reimbursement out of any part of the estate still undistributed or by a just and equitable contribution by the persons whose interest in the estate of the decedent would have been reduced if the tax had been paid before the distribution of the estate or whose interest is subject to equal or prior liability for the payment of taxes, debts, or other charges against the estate, it being the purpose and intent of this title that so far as is practicable and unless otherwise directed by the will of the decedent the tax shall be paid out of the estate before its distribution. [39 Stat. L. 779.]

See the notes to sec. 200 of this Act, *supra*, p. 305.

SEC. 209. [Tax as lien on decedent's estate — transfers in anticipation of death — innocent purchasers for value.] That unless the tax is sooner paid in full, it shall be a lien for ten years upon the gross estate of the decedent, except that such part of the gross estate as is used for the payment of charges against the estate and expenses of its administration, allowed by any court having jurisdiction thereof, shall be divested of such lien.

SEC. 305. [Stamps — collectors when not to furnish — discontinuance.] That hereafter collectors of internal revenue shall not furnish wholesale liquor dealer's stamps in lieu of and in exchange for stamps for rectified spirits unless the package covered by stamp for rectified spirits is to be broken into smaller packages.

The Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, is authorized to discontinue the use of the following stamps whenever in his judgment the interests of the Government will be subserved thereby: Distillery warehouse, special bonded warehouse, special bonded rewarehouse, general bonded warehouse, general bonded retransfer, transfer brandy, export tobacco, export cigars, export oleomargarine and export fermented liquor stamps. [— *Stat. L.* —.]

See the note to sec. 300 of this Act, *supra*, p. 296.

SEC. 306. [Distilleries, breweries and rectifying houses — installation of meters, etc.] That the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, is hereby authorized to require at distilleries, breweries, rectifying houses, and wherever else in his judgment such action may be deemed advisable, the installation of meters, tanks, pipes, or any other apparatus for the purpose of protecting the revenue, and such meters, tanks, and pipes and all necessary labor incident thereto shall be at the expense of the person, corporation, partnership, or association on whose premises the installation is required. Any such person, corporation, partnership, or association refusing or neglecting to install such apparatus when so required by the commissioner shall not be permitted to conduct business on such premises. [— *Stat. L.* —.]

See the note to sec. 300 of this Act, *supra*, p. 296.

SEC. 307. [Beer, ale, porter, etc.— amount of tax.] That on and after the passage of this Act there shall be levied and collected on all beer, lager beer, ale, porter, and other similar fermented liquor, containing one-half per centum or more of alcohol, brewed or manufactured and sold, or stored in warehouse, or removed for consumption or sale, within the United States, by whatever name such liquors may be called, in addition to the tax now imposed by law, a tax of \$1.50 for every barrel containing not more than thirty-one gallons, and at a like rate for any other quantity or for the fractional parts of a barrel authorized and defined by law. [— *Stat. L.* —.]

See the note to sec. 300 of this Act, *supra*, p. 296.

SEC. 308. [Fermented liquors — removal from brewery to distillery — tax.] That from and after the passage of this Act taxable fermented liquors may be conveyed without payment of tax from the brewery premises where produced to a contiguous industrial distillery of either class established under the Act of October third, nineteen hundred and thirteen, to be used as distilling material, and the residue from such distillation, containing less than one-half of one per centum of alcohol by volume, which is to be used in making beverages, may be manipulated by cooling, flavoring, carbonating, settling, and filtering on the distillery premises or elsewhere.

The removal of the taxable fermented liquor from the brewery to the

distillery and the operation of the distillery and removal of the residue therefrom shall be under the supervision of such officer or officers as the Commissioner of Internal Revenue shall deem proper, and the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, is hereby authorized to make such regulations from time to time as may be necessary to give force and effect to this section and to safeguard the revenue. [— *Stat. L.* —.]

See the note to sec. 300 of this Act, *supra*, p. 296.

For the Act of Oct. 3, 1913, ch. 16, § IV, N, subsec. 2, to which reference is made in the text, see 1914 Supp. Fed. Stat. Ann. 200; 4 Fed. Stat. Ann. (2d ed.) 121.

SEC. 309. [Still wines, etc.—amount of tax.] That upon all still wines, including vermouth, and upon all champagne and other sparkling wines, liqueurs, cordials, artificial or imitation wines or compounds sold as wine, produced in or imported into the United States, and hereafter removed from the custom-house, place of manufacture, or from bonded premises for sale or consumption, there shall be levied and collected, in addition to the tax now imposed by law upon such articles, a tax equal to such tax, to be levied, collected, and paid under the provisions of existing law. [— *Stat. L.* —.]

See the note to sec. 300 of this Act, *supra*, p. 296.

SEC. 310. [Still wines, etc.—additional tax.] That upon all articles specified in section three hundred and nine upon which the tax now imposed by law has been paid and which are on the day this Act is passed held in excess of twenty-five gallons in the aggregate of such articles and intended for sale, there shall be levied, collected, and paid a tax equal to the tax imposed by such section. [— *Stat. L.* —.]

See the note to sec. 300 of this Act, *supra*, p. 296.

SEC. 311. [Grape brandy or wine spirits — amount of tax.] That upon all grape brandy or wine spirits withdrawn by a producer of wines from any fruit distillery or special bonded warehouse under subdivision (c) of section four hundred and two of the Act entitled "An Act to increase the revenue, and for other purposes," approved September eighth, nineteen hundred and sixteen, there shall be levied, assessed, collected, and paid in addition to the tax therein imposed, a tax equal to double such tax, to be assessed, collected, and paid under the provisions of existing law. [— *Stat. L.* —.]

See the note to sec. 300 of this Act, *supra*, p. 296.

The Act of Sept. 8, 1916, ch. 463, § 402, subdivision (c), mentioned in the text, is given *supra*, p. 289.

SEC. 312. [Sweet wines — additional tax.] That upon all sweet wines held for sale by the producer thereof upon the day this Act is passed there shall be levied, assessed, collected, and paid an additional tax equivalent to 10 cents per proof gallon upon the grape brandy or wine spirits used in the fortification of such wine, and an additional tax of 20 cents per proof gallon shall be levied, assessed, collected, and paid upon all grape brandy or wine spirits withdrawn by a producer of sweet wines for the purpose

to defray war expenses, and for other purposes." General administrative provisions of this Act, which affect these sections and should be read in connection herewith, are given under subdivision XV of this title, *infra*, p. 374.

The former Act of Sept. 8, 1916, ch. 463, title II, § 201, mentioned in the text, is given *supra*, p. 305.

SEC. 901. [Exemptions.] That the tax imposed by this title shall not apply to the transfer of the net estate of any decedent dying while serving in the military or naval forces of the United States, during the continuance of the war in which the United States is now engaged, or if death results from injuries received or disease contracted in such service, within one year after the termination of such war. For the purposes of this section the termination of the war shall be evidenced by the proclamation of the President. [— *Stat. L.* —.]

See the notes to the preceding § 900 of this Act.

VII. INCOMES

TITLE I.—INCOME TAX.

PART I.—ON INDIVIDUALS.

SEC. 1. [Individuals — amount of tax — nonresident aliens — dividends from corporations, etc. — normal tax provisions applicable — basis of tax.] (a) That there shall be levied, assessed, collected, and paid annually upon the entire net income received in the preceding calendar year from all sources by every individual, a citizen or resident of the United States, a tax of two per centum upon such income; and a like tax shall be levied, assessed, collected, and paid annually upon the entire net income received in the preceding calendar year from all sources within the United States by every individual, a nonresident alien, including interest on bonds, notes, or other interest-bearing obligations of residents, corporate or otherwise.

(b) In addition to the income tax imposed by subdivision (a) of this section (herein referred to as the normal tax) there shall be levied, assessed, collected, and paid upon the total net income of every individual, or, in the case of a nonresident alien, the total net income received from all sources within the United States, an additional income tax (herein referred to as the additional tax) of one per centum per annum upon the amount by which such total net income exceeds \$20,000 and does not exceed \$40,000, two per centum per annum upon the amount by which such total net income exceeds \$40,000 and does not exceed \$60,000, three per centum per annum upon the amount by which such total net income exceeds \$60,000 and does not exceed \$80,000, four per centum per annum upon the amount by which such total net income exceeds \$80,000 and does not exceed \$100,000, five per centum per annum upon the amount by which such total net income exceeds \$100,000 and does not exceed \$150,000, six per centum per annum upon the amount by which such total net income exceeds \$150,000 and does not exceed \$200,000, seven per centum per annum upon the amount by which such total net income exceeds \$200,000 and does not

exceed \$250,000, eight per centum per annum upon the amount by which such total net income exceeds \$250,000 and does not exceed \$300,000, nine per centum per annum upon the amount by which such total net income exceeds \$300,000 and does not exceed \$500,000, ten per centum per annum upon the amount by which such total net income exceeds \$500,000 and does not exceed \$1,000,000, eleven per centum per annum upon the amount by which such total net income exceeds \$1,000,000 and does not exceed \$1,500,000, twelve per centum per annum upon the amount by which such total net income exceeds \$1,500,000 and does not exceed \$2,000,000, and thirteen per centum per annum upon the amount by which such total net income exceeds \$2,000,000.

For the purpose of the additional tax there shall be included as income the income derived from dividends on the capital stock or from the net earnings of any corporation, joint-stock company or association, or insurance company, except that in the case of nonresident aliens such income derived from sources without the United States shall not be included.

All the provisions of this title relating to the normal tax on individuals, so far as they are applicable and are not inconsistent with this subdivision and section three, shall apply to the imposition, levy, assessment, and collection of the additional tax imposed under this subdivision.

(c) The foregoing normal and additional tax rates shall apply to the entire net income, except as hereinafter provided, received by every taxable person in the calendar year nineteen hundred and sixteen and in each calendar year thereafter. [39 Stat. L. 756.]

The foregoing § 1, and the following §§ 2-14, constitute "Title I.—Income Tax" comprising "Part I.—On Individuals" and "Part II.—On Corporations" of the Act of Sept. 8, 1916, ch. 463, entitled "An Act To increase the revenue and for other purposes." General administrative provisions of this Act, which affect these sections, and should be read in connection herewith, are given in subdivision XV of this title, *infra*, p. 374.

A tax in addition to that imposed by subdivisions (a) and (b) of this section was imposed by the Act of Oct. 3, 1917, ch. —, title I, §§ 1 and 2, *infra*, p. 336.

The amount of personal exemption allowed was prescribed by § 7 of this Act as amended, *infra*, p. 319, and the Act of Oct. 3, 1917, ch. —, title I, § 3, *infra*, p. 337.

The time for filing returns was prescribed by § 8 of this Act, and the time for payment of the tax was prescribed by § 9 of this Act, *infra*, pp. 320, 322.

SEC. 2. Income defined [—sources included—dividends—estates of deceased persons—trusts, etc.]. (a) That, subject only to such exemptions and deductions as are hereinafter allowed, the net income of a taxable person shall include gains, profits, and income, derived from salaries, wages, or compensation for personal service of whatever kind and in whatever form paid, or from professions, vocations, businesses, trade, commerce, or sales, or dealings in property, whether real or personal, growing out of the ownership or use of or interest in real or personal property, also from interest, rent, dividends, securities, or the transaction of any business carried on for gain or profit, or gains or profits and income derived from any source whatever.

(b) Income received by estates of deceased persons during the period of administration or settlement of the estate, shall be subject to the normal and additional tax and taxed to their estates, and also such income of estates or any kind of property held in trust, including such income accumulated in trust for the benefit of the unborn or unascertained persons,

or persons with contingent interests, and income held for future distribution under the terms of the will or trust shall be likewise taxed, the tax in each instance, except when the income is returned for the purpose of the tax by the beneficiary, to be assessed to the executor, administrator, or trustee, as the case may be: *Provided*, That where the income is to be distributed annually or regularly between existing heirs or legatees, or beneficiaries the rate of tax and method of computing the same shall be based in each case upon the amount of the individual share to be distributed.

Such trustees, executors, administrators, and other fiduciaries are hereby indemnified against the claims or demands of every beneficiary for all payments of taxes which they shall be required to make under the provisions of this title, and they shall have credit for the amount of such payments against the beneficiary or principal in any accounting which they make as such trustees, or other fiduciaries.

(c) For the purpose of ascertaining the gain derived from the sale or other disposition of property, real, personal, or mixed, acquired before March first, nineteen hundred and thirteen, the fair market price or value of such property as of March first, nineteen hundred and thirteen, shall be the basis for determining the amount of such gain derived. [39 Stat. L. 757, as amended by — Stat. L. —.]

See the note to the preceding § 1 of this Act.

Subdivision (a) of the foregoing § 2 was amended to read as here given by the Act of Oct. 3, 1917, ch. —, title XII, § 1200. As originally enacted it was as follows:

"(a) That, subject only to such exemptions and deductions as are hereinafter allowed, the net income of a taxable person shall include gains, profits, and income derived from salaries, wages, or compensation for personal service of whatever kind and in whatever form paid, or from professions, vocations, businesses, trade, commerce, or sales, or dealings in property, whether real or personal, growing out of the ownership or use of or interest in real or personal property, also from interest, rent, dividends, securities, or the transaction of any business carried on for gain or profit, or gains or profits and income derived from any source whatever: *Provided*, That the term 'dividends' as used in this title shall be held to mean any distribution made or ordered to be made by a corporation, joint-stock company, association, or insurance company, out of its earnings or profits accrued since March first, nineteen hundred and thirteen, and payable to its shareholders, whether in cash or in stock of the corporation, joint-stock company, association, or insurance company, which stock dividend shall be considered income, to the amount of its cash value."

SEC. 3. Additional tax includes undistributed profits. For the purpose of the additional tax, the taxable income of any individual shall include the share to which he would be entitled of the gains and profits, if divided or distributed, whether divided or distributed or not, of all corporations, joint-stock companies or associations, or insurance companies, however created or organized, formed or fraudulently availed of for the purpose of preventing the imposition of such tax through the medium of permitting such gains and profits to accumulate instead of being divided or distributed; and the fact that any such corporation, joint-stock company or association, or insurance company, is a mere holding company, or that the gains and profits are permitted to accumulate beyond the reasonable needs of the business, shall be prima facie evidence of a fraudulent purpose to escape such tax; but the fact that the gains and profits are in any case permitted to accumulate and become surplus shall not be construed as evidence of a purpose to escape the said tax in such case unless the Secretary of the Treasury shall certify that in his opinion such accumulation is unreasonable

for the purposes of the business. When requested by the Commissioner of Internal Revenue, or any district collector of internal revenue, such corporation, joint-stock company or association, or insurance company shall forward to him a correct statement of such gains and profits and the names and addresses of the individuals or shareholders who would be entitled to the same if divided or distributed. [39 Stat. L. 758.]

See the note to § 1 of this Act, *supra*, p. 312.

SEC. 4. Income exempt from law. The following income shall be exempt from the provisions of this title:

The proceeds of life insurance policies paid to individual beneficiaries upon the death of the insured; the amount received by the insured, as a return of premium or premiums paid by him under life insurance, endowment, or annuity contracts, either during the term or at the maturity of the term mentioned in the contract or upon surrender of the contract; the value of property acquired by gift, bequest, devise, or descent (but the income from such property shall be included as income); interest upon the obligations of a State or any political subdivision thereof or upon the obligations of the United States (but, in the case of obligations of the United States issued after September first, nineteen hundred and seventeen, only if and to the extent provided in the Act authorizing the issue thereof) or its possessions or securities issued under the provisions of the Federal Farm Loan Act of July seventeenth, nineteen hundred and sixteen; the compensation of the present President of the United States during the term for which he has been elected and the judges of the supreme and inferior courts of the United States now in office, and the compensation of all officers and employees of a State, or any political subdivision thereof, except when such compensation is paid by the United States Government. [39 Stat. L. 758, as amended by — Stat. L. —.]

See the note to § 1 of this Act, *supra*, p. 312.

The foregoing section 4 was amended to read as here given by the Act of Oct. 3, 1917, ch. —, title XII, § 1200. As originally enacted it was as follows:

"**SEC. 4. Income Exempt from Law.** The following income shall be exempt from the provisions of this title:

"The proceeds of life insurance policies paid to individual beneficiaries upon the death of the insured; the amount received by the insured, as a return of premium or premiums paid by him under life insurance, endowment, or annuity contracts, either during the term or at the maturity of the term mentioned in the contract or upon the surrender of the contract; the value of property acquired by gift, bequest, devise, or descent (but the income from such property shall be included); interest upon the obligations of a State or any political subdivision thereof or upon the obligations of the United States or its possessions or securities issued under the provisions of the Federal farm loan Act of July seventeenth, nineteen hundred and sixteen; the compensation of the present President of the United States during the term for which he has been elected, and the judges of the Supreme and inferior courts of the United States now in office, and the compensation of all officers and employees of a State, or any political subdivision thereof, except when such compensation is paid by the United States Government. [39 Stat. L. 758.]"

The Federal Farm Loan Act of July 17, 1916, ch. 256, mentioned in the text is given *ante*, p. 14.

SEC. 5. Deductions allowed. That in computing net income in the case of a citizen or resident of the United States —

(a) For the purpose of the tax there shall be allowed as deductions —

First. The necessary expenses actually paid in carrying on any business or trade, not including personal, living, or family expenses;

Second. All interest paid within the year on his indebtedness except on indebtedness incurred for the purchase of obligations or securities the interest upon which is exempt from taxation as income under this title;

Third. Taxes paid within the year imposed by the authority of the United States (except income and excess profits taxes) or of its Territories, or possessions, or any foreign country, or by the authority of any State, county, school district, or municipality, or other taxing subdivision of any State, not including those assessed against local benefits;

Fourth. Losses actually sustained during the year, incurred in his business or trade, or arising from fires, storms, shipwreck, or other casualty, and from theft, when such losses are not compensated for by insurance or otherwise: *Provided*, That for the purpose of ascertaining the loss sustained from the sale or other disposition of property, real, personal, or mixed, acquired before March first, nineteen hundred and thirteen, the fair market price or value of such property as of March first, nineteen hundred and thirteen, shall be the basis for determining the amount of such loss sustained;

Fifth. In transactions entered into for profit but not connected with his business or trade, the losses actually sustained therein during the year to an amount not exceeding the profits arising therefrom;

Sixth. Debts due to the taxpayer actually ascertained to be worthless and charged off within the year;

Seventh. A reasonable allowance for the exhaustion, wear and tear of property arising out of its use or employment in the business or trade;

Eighth. (a) In the case of oil and gas wells a reasonable allowance for actual reduction in flow and production to be ascertained not by the flush flow, but by the settled production or regular flow; (b) in the case of mines a reasonable allowance for depletion thereof not to exceed the market value in the mine of the product thereof, which has been mined and sold during the year for which the return and computation are made, such reasonable allowance to be made in the case of both (a) and (b) under rules and regulations to be prescribed by the Secretary of the Treasury: *Provided*, That when the allowances authorized in (a) and (b) shall equal the capital originally invested, or in case of purchase made prior to March first, nineteen hundred and thirteen, the fair market value as of that date, no further allowance shall be made. No deduction shall be allowed for any amount paid out for new buildings, permanent improvements, or betterments, made to increase the value of any property or estate, and no deduction shall be made for any amount of expense of restoring property or making good the exhaustion thereof for which an allowance is or has been made.

Ninth. Contributions or gifts actually made within the year to corporations or associations organized and operated exclusively for religious, charitable, scientific, or educational purposes, or to societies for the prevention of cruelty to children or animals, no part of the net income of which inures to the benefit of any private stockholder or individual, to an amount not in excess of fifteen per centum of the taxpayer's taxable net income as computed without the benefit of this paragraph. Such contributions or gifts

shall be allowable as deductions only if verified under rules and regulations prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury.

(b) **Credits allowed.** For the purpose of the normal tax only, the income embraced in a personal return shall be credited with the amount received as dividends upon the stock or from the net earnings of any corporation, joint-stock company or association, trustee, or insurance company, which is taxable upon its net income as hereinafter provided;

(c) A like credit shall be allowed as to the amount of income, the normal tax upon which has been paid or withheld for payment at the source of the income under the provisions of this title. [39 Stat. L. 759, as amended by — Stat. L. —.]

See the note to § 1 of this Act, *supra*, p. 312.

This section was amended to read as here given by the Act of Oct. 3, 1917, ch. —, title XII, § 1201. The amendment consisted in changing paragraphs "second" and "third" of subdivision (a), which were originally as follows:

"*Second.* All interest paid within the year on his indebtedness;

"*Third.* Taxes paid within the year imposed by the authority of the United States, or its Territories, or possessions, or any foreign country, or under the authority of any State, county, school district, or municipality, or other taxing subdivision of any State, not including those assessed against local benefits;"

to read as given in the text, and the addition of a new paragraph "ninth" at the end of said subdivision (a).

SEC. 6. Nonresident aliens [—computation of income—deductions allowed]. That in computing net income in the case of a nonresident alien —

(a) For the purpose of the tax there shall be allowed as deductions —

First. The necessary expenses actually paid in carrying on any business or trade conducted by him within the United States, not including personal, living, or family expenses;

Second. The proportion of all interest paid within the year by such person on his indebtedness (except on indebtedness incurred for the purchase of obligations or securities the interest upon which is exempt from taxation as income under this title) which the gross amount of his income for the year derived from sources within the United States bears to the gross amount of his income for the year derived from all courses within and without the United States, but this deduction shall be allowed only if such person includes in the return required by section eight all the information necessary for its calculation;

Third. Taxes paid within the year imposed by the authority of the United States (except income and excess profits taxes), or of its Territories, or possessions, or by the authority of any State, county, school district, or municipality, or other taxing subdivision of any State, paid within the United States, not including those assessed against local benefits;

Fourth. Losses actually sustained during the year, incurred in business or trade conducted by him within the United States, and losses of property within the United States arising from fires, storms, shipwreck, or other casualty, and from theft, when such losses are not compensated for by insurance or otherwise: *Provided*, That for the purpose of ascertaining the amount of such loss or losses sustained in trade, or speculative transactions not in trade, from the same or any kind of property acquired before

March first, nineteen hundred and thirteen, the fair market price or value of such property as of March first, nineteen hundred and thirteen, shall be the basis for determining the amount of such loss or losses sustained;

Fifth. In transactions entered into for profit but not connected with his business or trade, the losses actually sustained therein during the year to an amount not exceeding the profits arising therefrom in the United States;

Sixth. Debts arising in the course of business or trade conducted by him within the United States due to the taxpayer actually ascertained to be worthless and charged off within the year;

Seventh. A reasonable allowance for the exhaustion, wear and tear of property within the United States arising out of its use or employment in the business or trade; (a) in the case of oil and gas wells a reasonable allowance for actual reduction in flow and production to be ascertained not by the flush flow, but by the settled production or regular flow; (b) in the case of mines a reasonable allowance for depletion thereof not to exceed the market value in the mine of the product thereof which has been mined and sold during the year for which the return and computation are made, such reasonable allowance to be made in the case of both (a) and (b) under rules and regulations to be prescribed by the Secretary of the Treasury: *Provided*, That when the allowance authorized in (a) and (b) shall equal the capital originally invested, or in case of purchase made prior to March first, nineteen hundred and thirteen, the fair market value as of that date, no further allowance shall be made. No deduction shall be allowed for any amount paid out for new buildings, permanent improvements, or betterments, made to increase the value of any property or estate, and no deduction shall be made for any amount of expense of restoring property or making good the exhaustion thereof for which an allowance is or has been made.

(b) There shall also be allowed the credits specified by subdivisions (b) and (c) of section five.

(c) A nonresident alien individual shall receive the benefit of the deductions and credits provided for in this section only by filing or causing to be filed with the collector of internal revenue a true and accurate return of his total income, received from all sources, corporate or otherwise, in the United States, in the manner prescribed by this title; and in case of this failure to file such return the collector shall collect the tax on such income, and all property belonging to such nonresident alien individual shall be liable to distraint for the tax. [39 Stat. L. 760, as amended by — Stat. L. —.]

See the note to § 1 of this Act, *supra*, p. 312.

This section was amended to read as given in the text by the Act of Oct. 3, 1917, ch. —, title XII, § 1202. The amendments consisted in the substitution of paragraphs "second" and "third" to read as given in the text for the original paragraphs, which were as follows:

"*Second.* The proportion of all interest paid within the year by such person on his indebtedness which the gross amount of his income for the year derived from sources within the United States bears to the gross amount of his income for the year derived from all sources within and without the United States, but this deduction shall be allowed only if such person includes in the return required by section eight all the information necessary for its calculation;

"*Third.* Taxes paid within the year imposed by the authority of the United States, or its Territories, or possessions, or under the authority of any State, county, school district, or municipality, or other taxing subdivision of any State, paid within the United States, not including those assessed against local benefits;" and the adding of the new final paragraph (c).

SEC. 7. Personal exemption [— limitations — guardians or trustees — estates of decedents]. That for the purpose of the normal tax only, there shall be allowed as an exemption in the nature of a deduction from the amount of the net income of each citizen or resident of the United States, ascertained as provided herein, the sum of \$3,000, plus \$1,000 additional if the person making the return be a head of a family or a married man with a wife living with him, or plus the sum of \$1,000 additional if the person making the return be a married woman with a husband living with her; but in no event shall this additional exemption of \$1,000 be deducted by both a husband and a wife: *Provided*, That only one deduction of \$4,000 shall be made from the aggregate income of both husband and wife when living together: *Provided further*, That if the person making the return is the head of a family there shall be an additional exemption of \$200 for each child dependent upon such person, if under eighteen years of age, or if incapable of self-support because mentally or physically defective, but this provision shall operate only in the case of one parent in the same family: *Provided further*, That guardians or trustees shall be allowed to make this personal exemption as to income derived from the property of which such guardian or trustee has charge in favor of each ward or cestui que trust: *Provided further*, That in no event shall a ward or cestui que trust be allowed a greater personal exemption than as provided in this section, from the amount of net income received from all sources. There shall also be allowed an exemption from the amount of the net income of estates of deceased citizens or residents of the United States during the period of administration or settlement, and of trust or other estates of citizens or residents of the United States the income of which is not distributed annually or regularly under the provisions of subdivision (b) of section two, the sum of \$3,000, including such deductions as are allowed under section five. [39 Stat. L. 761, as amended by — Stat. L. —.]

See the notes to § 1 of this Act, *supra*, p. 312.

This section was amended to read as given in the text by the Act of Oct. 3, 1917, ch. —, title XII, § 1203. As originally enacted it was as follows:

"**SEC. 7. Personal Exemption.**—(a) That for the purpose of the normal tax only, there shall be allowed as an exemption in the nature of a deduction from the amount of the net income of each of said persons, ascertained as provided herein, the sum of \$3,000, plus \$1,000 additional if the person making the return be a head of a family or a married man with a wife living with him, or plus the sum of \$1,000 additional if the person making the return be a married woman with a husband living with her; but in no event shall this additional exemption of \$1,000 be deducted by both a husband and a wife: *Provided*, That only one deduction of \$4,000 shall be made from the aggregate income of both husband and wife when living together: *Provided further*, That guardians or trustees shall be allowed to make this personal exemption as to income derived from the property of which such guardian or trustee has charge in favor of each ward or cestui que trust: *Provided further*, That in no event shall a ward or cestui que trust be allowed a greater personal exemption than \$3,000, or, if married, \$4,000, as provided in this paragraph, from the amount of net income received from all sources. There shall also be allowed an exemption from the amount of the net income of estates of deceased persons during the period of administration or settlement, and of trust or other estates the income of which is not distributed annually or regularly under the provisions of paragraph (b), section two, the sum of \$3,000, including such deductions as are allowed under section five.

"(b) A nonresident alien individual may receive the benefit of the exemption provided for in this section only by filing or causing to be filed with the collector of internal revenue a true and accurate return of his total income, received from all sources, corporate or otherwise, in the United States, in the manner prescribed by this title; and in case of his failure to file such return the collector shall collect the tax on such income, and all property belonging to such nonresident alien individual shall be liable to distraint for the tax."

Subdivision "(h)" of this section as originally enacted was repealed by said amending section.

The personal exemption was reduced by the Act of Oct. 3, 1917, ch. —, title 1, § 3, *infra*, p. 337.

SEC. 8. Returns [—when to be filed—by whom to be filed]. (a) The tax shall be computed upon the net income, as thus ascertained, of each person subject thereto, received in each preceding calendar year ending December thirty-first.

(b) On or before the first day of March, nineteen hundred and seventeen, and the first day of March in each year thereafter, a true and accurate return under oath shall be made by each person of lawful age, except as hereinafter provided, having a net income of \$3,000 or over for the taxable year to the collector of internal revenue for the district in which such person has his legal residence or principal place of business, or if there be no legal residence or place of business in the United States, then with the collector of internal revenue at Baltimore, Maryland, in such form as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall prescribe, setting forth specifically the gross amount of income from all separate sources, and from the total thereof deducting the aggregate items of allowances herein authorized: *Provided*, That the Commissioner of Internal Revenue shall have authority to grant a reasonable extension of time, in meritorious cases, for filing returns of income by persons residing or traveling abroad who are required to make and file returns of income and who are unable to file said returns on or before March first of each year: *Provided further*, That the aforesaid return may be made by an agent when by reason of illness, absence, or nonresidence the person liable for said return is unable to make and render the same, the agent assuming the responsibility of making the return and incurring penalties provided for erroneous, false, or fraudulent return.

(c) Guardians, trustees, executors, administrators, receivers, conservators, and all persons, corporations, or associations, acting in any fiduciary capacity, shall make and render a return of the income of the person, trust, or estate for whom or which they act, and be subject to all the provisions of this title which apply to individuals. Such fiduciary shall make oath that he has sufficient knowledge of the affairs of such person, trust, or estate to enable him to make such return and that the same is, to the best of his knowledge and belief, true and correct, and be subject to all the provisions of this title which apply to individuals: *Provided*, That a return made by one of two or more joint fiduciaries filed in the district where such fiduciary resides, under such regulations as the Secretary of the Treasury may prescribe, shall be a sufficient compliance with the requirements of this paragraph: *Provided further*, That no return of income not exceeding \$3,000 shall be required except as in this title otherwise provided.

(e) Persons carrying on business in partnership shall be liable for income tax only in their individual capacity, and the share of the profits of the partnership to which any taxable partner would be entitled if the same were divided, whether divided or otherwise, shall be returned for taxation and the tax paid under the provisions of this title: *Provided*, That from the net distributive interests on which the individual members shall be

liable for tax, normal and additional, there shall be excluded their proportionate shares received from interests on the obligations of a State or any political or taxing subdivision thereof, and upon the obligations of the United States (if and to the extent that it is provided in the Act authorizing the issue of such obligations of the United States that they are exempt from taxation), and its possessions, and that for the purpose of computing the normal tax there shall be allowed a credit, as provided by section five, subdivision (b), for their proportionate share of the profits derived from dividends. Such partnership, when requested by the Commissioner of Internal Revenue or any district collector, shall render a correct return of the earnings, profits, and income of the partnership, except income exempt under section four of this Act, setting forth the item of the gross income and the deductions and credits allowed by this title, and the names and addresses of the individuals who would be entitled to the net earnings, profits, and income, if distributed. A partnership shall have the same privilege of fixing and making returns upon the basis of its own fiscal year as is accorded to corporations under this title. If a fiscal year ends during nineteen hundred and sixteen or a subsequent calendar year for which there is a rate of tax different from the rate for the preceding calendar year, then (1) the rate for such preceding calendar year shall apply to an amount of each partner's share of such partnership profits equal to the proportion which the part of such fiscal year falling within such calendar year bears to the full fiscal year, and (2) the rate for the calendar year during which such fiscal year ends shall apply to the remainder.

(f) In every return shall be included the income derived from dividends on the capital stock or from the net earnings of any corporation, joint-stock company or association, or insurance company, except that in the case of nonresident aliens such income derived from sources without the United States shall not be included.

(g) An individual keeping accounts upon any basis other than that of actual receipts and disbursements, unless such other basis does not clearly reflect his income, may, subject to regulations made by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, make his return upon the basis upon which his accounts are kept, in which case the tax shall be computed upon his income as so returned. [39 Stat. L. 761, as amended by — Stat. L. —.]

See the notes to § 1 of this Act, *supra*, p. 312.

This section was amended by the Act of Oct. 3, 1917, ch. —, title XII, § 1204. The amendment consisted in the substitution of subdivisions (c) and (e) as given in the text for those originally enacted, which were as follows:

"(c) Guardians, trustees, executors, administrators, receivers, conservators, and all persons, corporations, or associations acting in any fiduciary capacity, shall make and render a return of the income of the person, trust, or estate for whom or which they act, and be subject to all the provisions of this title which apply to individuals. Such fiduciary shall make oath that he has sufficient knowledge of the affairs of such person, trust, or estate to enable him to make such return and that the same is, to the best of his knowledge and belief, true and correct, and be subject to all the provisions of this title which apply to individuals: *Provided*, that a return made by one of two or more joint fiduciaries filed in the district where such fiduciary resides, under such regulations as the Secretary of the Treasury may prescribe, shall be a sufficient compliance with the requirements of this paragraph.

"(e) Persons carrying on business in partnership shall be liable for income tax only in their individual capacity, and the share of the profits of the partnership to which any taxable partner would be entitled if the same were divided, whether divided

or otherwise, shall be returned for taxation and the tax paid under the provisions of this title: *Provided*, That from the net distributive interests on which the individual members shall be liable for tax, normal and additional, there shall be excluded their proportionate shares received from interest on the obligations of a State or any political or taxing subdivision thereof, and upon the obligations of the United States and its possessions, and all taxes paid to the United States or to any possession thereof, or to any State, county, or taxing subdivision of a State, and that for the purpose of computing the normal tax there shall be allowed a credit, as provided by section five, subdivision (b), for their proportionate share of the profits derived from dividends. And such partnership, when requested by the Commissioner of Internal Revenue, or any district collector, shall render a correct return of the earnings, profits, and income of the partnership, except income exempt under section four of this Act, setting forth the item of the gross income and the deductions and credits allowed by this title, and the names and addresses of the individuals who would be entitled to the net earnings, profits, and income, if distributed."

Said amending section also repeated a subdivision "(d)" contained in this section as originally enacted and which was as follows:

"(d) All persons, firms, companies, copartnerships, corporations, joint-stock companies, or associations, and insurance companies, except as hereinafter provided, in whatever capacity acting, having the control, receipt, disposal, or payment of fixed or determinable annual or periodical gains, profits, and income of another individual subject to tax, shall in behalf of such person deduct and withhold from the payment an amount equivalent to the normal tax upon the same and make and render a return, as aforesaid, but separate and distinct, of the portion of the income of each person from which the normal tax has been thus withheld, and containing also the name and address of such person or stating that the name and address or the address, as the case may be, are unknown: *Provided*, That the provision requiring the normal tax of individuals to be deducted and withheld at the source of the income shall not be construed to require the withholding of such tax according to the two per centum normal tax rate herein prescribed until on and after January first, nineteen hundred and seventeen, and the law existing at the time of the passage of this Act shall govern the amount withheld or to be withheld at the source until January first, nineteen hundred and seventeen.

"That in either case mentioned in subdivisions (c) and (d) of this section no return of income not exceeding \$3,000 shall be required, except as in this title provided."

The personal exemption of \$3,000 mentioned in this section was reduced by the Act of Oct. 3, 1917, ch. —, title 1, § 3, *infra*, p. 337.

SEC. 9. Assessment and administration [—notification—time of payment]. (a) That all assessments shall be made by the Commissioner of Internal Revenue and all persons shall be notified of the amount for which they are respectively liable on or before the first day of June of each successive year, and said amounts shall be paid on or before the fifteenth day of June, except in cases of refusal or neglect to make such return and in cases of erroneous, false, or fraudulent returns, in which cases the Commissioner of Internal Revenue shall upon the discovery thereof, at any time within three years after said return is due, or has been made, make a return upon information obtained as provided for in this title or by existing law, or require the necessary corrections to be made, and the assessment made by the Commissioner of Internal Revenue thereon shall be paid by such person or persons immediately upon notification of the amount of such assessment; and to any sum or sums due and unpaid after the fifteenth day of June in any year, and for ten days after notice and demand thereof by the collector, there shall be added the sum of five per centum on the amount of tax unpaid, and interest at the rate of one per centum per month upon said tax from the time the same became due, except from the estates of insane, deceased, or insolvent persons.

(b) All persons, corporations, partnerships, associations, and insurance companies, in whatever capacity acting, including lessees or mortgagors of real or personal property, trustees acting in any trust capacity, executors,

administrators, receivers, conservators, employers, and all officers and employees of the United States, having the control, receipt, custody, disposal, or payment of interest, rent, salaries, wages, premiums, annuities, compensation, remuneration, emoluments, or other fixed or determinable annual or periodical gains, profits, and income of any nonresident alien individual, other than income derived from dividends on capital stock, or from the net earnings of a corporation, joint-stock company or association, or insurance company, which is taxable upon its net income as provided in this title, are hereby authorized and required to deduct and withhold from such annual or periodical gains, profits, and income such sum as will be sufficient to pay the normal tax imposed thereon by this title, and shall make return thereof on or before March first of each year and, on or before the time fixed by law for the payment of the tax, shall pay the amount withheld to the officer of the United States Government authorized to receive the same; and they are each hereby made personally liable for such tax, and they are each hereby indemnified against every person, corporation, partnership, association, or insurance company, or demand whatsoever for all payments which they shall make in pursuance and by virtue of this title.

(c) The amount of the normal tax hereinbefore imposed shall also be deducted and withheld from fixed or determinable annual or periodical gains, profits and income derived from interest upon bonds and mortgages, or deeds of trust or other similar obligations of corporations, joint-stock companies, associations, and insurance companies, (if such bonds, mortgages, or other obligations contain a contract or provision by which the obligor agrees to pay any portion of the tax imposed by this title upon the obligee or to reimburse the obligee for any portion of the tax or to pay the interest without deduction for any tax which the obligor may be required or permitted to pay thereon or to retain therefrom under any law of the United States) whether payable annually or at shorter or longer periods and whether such interest is payable to a nonresident alien individual or to an individual citizen or resident of the United States, subject to the provisions of the foregoing subdivision (b) of this section requiring the tax to be withheld at the source and deducted from annual income and returned and paid to the Government, unless the person entitled to receive such interest shall file with the withholding agent, on or before February first, a signed notice in writing claiming the benefit of an exemption under section seven of this Title.

(f) All persons, corporations, partnerships, or associations, undertaking as a matter of business or for profit the collection of foreign payments of interest or dividends by means of coupons, checks, or bills of exchange shall obtain a license from the Commissioner of Internal Revenue, and shall be subject to such regulations enabling the Government to obtain the information required under this title, as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall prescribe; and whoever knowingly undertakes to collect such payments as aforesaid without having obtained a license therefor, or without complying with such regulations, shall be deemed guilty of a misdemeanor and for each offense be fined in a sum not exceeding \$5,000, or imprisoned for a term not exceeding one year, or both, in the discretion of the court.

(g) The tax herein imposed upon gains, profits, and incomes not falling under the foregoing and not returned and paid by virtue of the foregoing or as otherwise provided by law shall be assessed by personal return under rules and regulations to be prescribed by the Commissioner of Internal Revenue and approved by the Secretary of the Treasury. The intent and purpose of this title is that all gains, profits, and income of a taxable class, as defined by this title, shall be charged and assessed with the corresponding tax, normal and additional, prescribed by this title, and said tax shall be paid by the owner of such income, or the proper representative having the receipt, custody, control, or disposal of the same. For the purpose of this title ownership or liability shall be determined as of the year for which a return is required to be rendered.

The provisions of this section, except subdivision (c), relating to the deduction and payment of the tax at the source of income shall only apply to the normal tax hereinbefore imposed upon nonresident alien individuals. [39 Stat. L. 763, as amended by — Stat. L. —.]

See the notes to § 1 of this Act, *supra*, p. 312.

Subdivisions (b), (c), (f), and (g) of the foregoing section 9 were amended to read as given in the text, and subdivisions (d) and (e) of said section were repealed by the Act of Oct. 3, 1917, ch. —, title XII, § 1205. As originally enacted the subdivisions so amended and repealed were as follows:

"(b) All persons, firms, copartnerships, companies, corporations, joint-stock companies, or associations, and insurance companies, in whatever capacity acting, including lessees or mortgagors of real or personal property, trustees acting in any trust capacity, executors, administrators, receivers, conservators, employers, and all officers and employees of the United States having the control, receipt, custody, disposal, or payment of interest, rent, salaries, wages, premiums, annuities, compensation, remuneration, emoluments, or other fixed or determinable annual or periodical gains, profits, and income of another person, exceeding \$3,000 for any taxable year, other than income derived from dividends on capital stock, or from the net earnings of corporations and joint-stock companies or associations, or insurance companies, the income of which is taxable under this title, who are required to make and render a return in behalf of another, as provided herein, to the collector of his, her, or its district, are hereby authorized and required to deduct and withhold from such annual or periodical gains, profits, and income such sum as will be sufficient to pay the normal tax imposed thereon by this title, and shall pay the amount withheld to the officer of the United States Government authorized to receive the same; and they are each hereby made personally liable for such tax, and they are each hereby indemnified against every person, corporation, association, or demand whatsoever for all payments which they shall make in pursuance and by virtue of this title.

"In all cases where the income tax of a person is withheld and deducted and paid or to be paid at the source, such person shall not receive the benefit of the personal exemption allowed in section seven of this title except by an application for refund of the tax unless he shall, not less than thirty days prior to the day on which the return of his income is due, file with the person who is required to withhold and pay tax for him a signed notice in writing claiming the benefit of such exemption, and thereupon no tax shall be withheld upon the amount of such exemption: *Provided*, That if any person for the purpose of obtaining any allowance or reduction by virtue of a claim for such exemption, either for himself or for any other person, knowingly makes any false statement or false or fraudulent representation, he shall be liable to a penalty of not exceeding \$300.

"And where the income tax is paid or to be paid at the source, no person shall be allowed the benefit of any deduction provided for in sections five or six of this title unless he shall, not less than thirty days prior to the day on which the return of his income is due, either (1) file with the person who is required to withhold and pay tax for him a true and correct return of his gains, profits and income from all other sources, and also the deductions asked for, and the showing thus made shall then become a part of the return to be made in his behalf by the person required to withhold and pay the tax, or (2) likewise make application for deductions to the collector of the district in which return is made or to be made for him: *Provided*, That when any amount allowable as a deduction is known at the time of receipt of fixed annual or periodical income by an individual subject to tax, he may file with the person, firm, or corporation making the

payment a certificate, under penalty for false claim, and in such form as shall be prescribed by the Commissioner of Internal Revenue, stating the amount of such deduction and making a claim for an allowance of the same against the amount of tax otherwise required to be deducted and withheld at the source of the income, and such certificate shall likewise become a part of the return to be made in his behalf.

"If such person is absent from the United States, or is unable owing to serious illness to make the return and application above provided for, the return and application may be made an agent, he making oath that he has sufficient knowledge of the affairs and property of his principal to enable him to make a full and complete return, and that the return and application made by him are full and complete.

"(c) The amount of the normal tax hereinbefore imposed shall be deducted and withheld from fixed or determinable annual or periodical gains, profits, and income derived from interest upon bonds and mortgages, or deeds of trust or other similar obligations of corporations, joint-stock companies, associations, and insurance companies, whether payable annually or at shorter or longer periods, although such interest does not amount to \$3,000, subject to the provisions of this title requiring the tax to be withheld at the source and deducted from annual income returned and paid to the Government.

"(d) And likewise the amount of such tax shall be deducted and withheld from coupons, checks, or bills of exchange for or in payment of interest upon bonds of foreign countries and upon foreign mortgages or like obligations (not payable in the United States), and also from coupons, checks, or bills of exchange for or in payment of any dividends upon the stock or interest upon the obligations of foreign corporations, associations, and insurance companies engaged in business in foreign countries.

"And the tax in such cases shall be withheld, deducted, and returned for and in behalf of any person subject to the tax hereinbefore imposed, although such interest or dividends do not exceed \$3,000, by (1) any banker or person who shall sell or otherwise realize coupons, checks, or bills of exchange drawn or made in payment of any such interest or dividends (not payable in the United States), and (2) any person who shall obtain payment (not in the United States), in behalf of another of such dividends and interest by means of coupons, checks, or bills of exchange, and also (3) any dealer in such coupons who shall purchase the same for any such dividends or interest (not payable in the United States), otherwise from a banker or another dealer in such coupons.

"(e) Where the tax is withheld at the source, the benefit of the exemption and the deductions allowable under this title may be had by complying with the foregoing provisions of this section.

"(f) All persons, firms, or corporations undertaking as a matter of business or for profit the collection of foreign payments of such interest or dividends by means of coupons, checks, or bills of exchange shall obtain a license from the Commissioner of Internal Revenue, and shall be subject to such regulations enabling the Government to ascertain and verify the due withholding and payment of the income tax required to be withheld and paid as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall prescribe; and any person who shall knowingly undertake to collect such payments as aforesaid without having obtained a license therefor, or without complying with such regulations, shall be deemed guilty of a misdemeanor and for each offense be fined in a sum not exceeding \$5,000, or imprisoned for a term not exceeding one year, or both, in the discretion of the court.

"(g) The tax herein imposed upon gains, profits, and income not falling under the foregoing and not returned and paid by virtue of the foregoing shall be assessed by personal return under rules and regulations to be prescribed by the Commissioner of Internal Revenue and approved by the Secretary of the Treasury. The intent and purpose of this title is that all gains, profits, and income of a taxable class, as defined by this title, shall be charged and assessed with the corresponding tax, normal and additional, prescribed by this title, and said tax shall be paid by the owner of such income, or the proper representative having the receipt, custody, control, or disposal of the same. For the purpose of this title ownership or liability shall be determined as of the year for which a return is required to be rendered."

The provisions of this title relating to the deduction and payment of the tax at the source of income shall only apply to the normal tax hereinbefore imposed upon individuals.

PART II.—ON CORPORATIONS.

SEC. 10. [Corporations — amount of tax.] (a) That there shall be levied, assessed, collected, and paid annually upon the total net income received in the preceding calendar year from all sources by every corpora-

tion, joint-stock company or association, or insurance company, organized in the United States, no matter how created or organized, but not including partnerships, a tax of two per centum upon such income; and a like tax shall be levied, assessed, collected, and paid annually upon the total net income received in the preceding calendar year from all sources within the United States by every corporation, joint-stock company or association, or insurance company, organized, authorized, or existing under the laws of any foreign country, including interest on bonds, notes, or other interest-bearing obligations of residents, corporate or otherwise, and including the income derived from dividends on capital stock or from net earnings of resident corporations, joint-stock companies or associations, or insurance companies, whose net income is taxable under this title.

The foregoing tax rate shall apply to the total net income received by every taxable corporation, joint-stock company or association, or insurance company in the calendar year nineteen hundred and sixteen and in each year thereafter, except that if it has fixed its own fiscal year under the provisions of existing law, the foregoing rate shall apply to the proportion of the total net income returned for the fiscal year ending prior to December thirty-first, nineteen hundred and sixteen, which the period between January first, nineteen hundred and sixteen, and the end of such fiscal year bears to the whole of such fiscal year, and the rate fixed in Section II of the Act approved October third, nineteen hundred and thirteen, entitled "An Act to reduce tariff duties and to provide revenue for the Government, and for other purposes," shall apply to the remaining portion of the total net income returned for such fiscal year.

For the purpose of ascertaining the gain derived or loss sustained from the sale or other disposition by a corporation, joint-stock company or association, or insurance company, of property, real, personal, or mixed, acquired before March first, nineteen hundred and thirteen, the fair market price or value of such property as of March first, nineteen hundred and thirteen, shall be the basis for determining the amount of such gain derived or loss sustained.

(b) In addition to the income tax imposed by subdivision (a) of this section there shall be levied, assessed, collected, and paid annually an additional tax of ten per centum upon the amount, remaining undistributed six months after the end of each calendar or fiscal year, of the total net income of every corporation, joint-stock company or association, or insurance company, received during the year, as determined for the purposes of the tax imposed by such subdivision (a), but not including the amount of any income taxes paid by it within the year imposed by the authority of the United States.

"The tax imposed by this subdivision shall not apply to that portion of such undistributed net income which is actually invested and employed in the business or is retained for employment in the reasonable requirements of the business or is invested in obligations of the United States issued after September first, nineteen hundred and seventeen: *Provided*, That if the Secretary of the Treasury ascertains and finds that any portion of such amount so retained at any time for employment in the business is not so employed or is not reasonably required in the business a tax of fifteen per centum shall be levied, assessed, collected, and paid thereon.

The foregoing tax rates shall apply to the undistributed net income received by every taxable corporation, joint-stock company or association, or insurance company in the calendar year nineteen hundred and seventeen and in each year thereafter, except that if it has fixed its own fiscal year under the provisions of existing law, the foregoing rates shall apply to the proportion of the taxable undistributed net income returned for the fiscal year ending prior to December thirty-first, nineteen hundred and seventeen, which the period between January first, nineteen hundred and seventeen, and the end of such fiscal year bears to the whole of such fiscal year. [39 Stat. L. 765, as amended by — Stat. L. —.]

See the notes to § 1 of this Act, *supra*, p. 312.

The foregoing section 10 was amended by the Act of Oct. 3, 1917, ch. —, title XII, § 1206, to read as given in the text, the amendment consisting of a substitution for the first paragraph of this section and the addition of a new subdivision "(b)." Said first paragraph of this section as originally enacted was as follows:

"That there shall be levied, assessed, collected, and paid annually upon the total net income received in the preceding calendar year from all sources by every corporation, joint-stock company or association, or insurance company, organized in the United States, no matter how created or organized but not including partnerships, a tax of two per centum upon such income; and a like tax shall be levied, assessed, collected, and paid annually upon the total net income received in the preceding calendar year from all sources within the United States by every corporation, joint-stock company or association, or insurance company organized, authorized, or existing under the laws of any foreign country, including interest on bonds, notes, or other interest-bearing obligations of residents, corporate or otherwise, and including the income derived from dividends on capital stock or from net earnings of resident corporations, joint-stock companies or associations, or insurance companies whose net income is taxable under this title: *Provided*, That the term 'dividends' as used in this title shall be held to mean any distribution made or ordered to be made by a corporation, joint-stock company, association, or insurance company, out of its earnings or profits accrued since March first, nineteen hundred and thirteen, and payable to its shareholders, whether in cash or in stock of the corporation, joint-stock company, association, or insurance company, which stock dividend shall be considered income, to the amount of its cash value."

A tax in addition to that imposed by subdivision (a) of this section was imposed by the Act of Oct. 3, 1917, ch. —, Title I, § 4, *infra*, p. 338.

SEC. 11. Conditional and other exemptions. (a) There shall not be taxed under this title any income received by any —

First. Labor, agricultural, or horticultural organization;

Second. Mutual savings bank not having a capital stock represented by shares;

Third. Fraternal beneficiary society, order, or association, operating under the lodge system or for the exclusive benefit of the members of a fraternity itself operating under the lodge system, and providing for the payment of life, sick, accident, or other benefits to the members of such society, order, or association or their dependents;

Fourth. Domestic building and loan association and cooperative banks without capital stock organized and operated for mutual purposes and without profit;

Fifth. Cemetery company owned and operated exclusively for the benefit of its members;

Sixth. Corporation or association organized and operated exclusively for religious, charitable, scientific, or educational purposes, no part of the net income of which inures to the benefit of any private stockholder or individual;

Seventh. Business league, chamber of commerce, or board of trade, not organized for profit and no part of the net income of which inures to the benefit of any private stockholder or individual;

Eighth. Civic league or organization not organized for profit but operated exclusively for the promotion of social welfare;

Ninth. Club organized and operated exclusively for pleasure, recreation, and other nonprofitable purposes, no part of the net income of which inures to the benefit of any private stockholder or member;

Tenth. Farmers' or other mutual hail, cyclone, or fire insurance company, mutual ditch or irrigation company, mutual or cooperative telephone company, or like organization of a purely local character, the income of which consists solely of assessments, dues, and fees collected from members for the sole purpose of meeting its expenses;

Eleventh. Farmers', fruit growers', or like association, organized and operated as a sales agent for the purpose of marketing the products of its members and turning back to them the proceeds of sales, less the necessary selling expenses, on the basis of the quantity of produce furnished by them;

Twelfth. Corporation or association organized for the exclusive purpose of holding title to property, collecting income therefrom, and turning over the entire amount thereof, less expenses, to an organization which itself is exempt from the tax imposed by this title; or

Thirteenth. Federal land banks and national farm-loan associations as provided in section twenty-six of the Act approved July seventeenth, nineteen hundred and sixteen, entitled "An Act to provide capital for agricultural development, to create standard forms of investment based upon farm mortgage, to equalize rates of interest upon farm loans, to furnish a market for United States bonds, to create Government depositaries and financial agents for the United States, and for other purposes."

Fourteenth. Joint stock land banks as to income derived from bonds or debentures of other joint stock land banks or any Federal land bank belonging to such joint stock land bank.

(b) There shall not be taxed under this title any income derived from any public utility or from the exercise of any essential governmental function accruing to any State, Territory, or the District of Columbia, or any political subdivision of a State or Territory, nor any income accruing to the government of the Philippine Islands or Porto Rico, or of any political subdivision of the Philippine Islands or Porto Rico: *Provided*, That whenever any State, Territory, or the District of Columbia, or any political subdivision of a State or Territory, has, prior to the passage of this title, entered in good faith into a contract with any person or corporation, the object and purpose of which is to acquire, construct, operate, or maintain a public utility, no tax shall be levied under the provisions of this title upon the income derived from the operation of such public utility, so far as the payment thereof will impose a loss or burden upon such State, Territory, or the District of Columbia, or a political subdivision of a State or Territory; but this provision is not intended to confer upon such person or corporation any financial gain or exemption or to relieve such person or corporation from the payment of a tax as provided for in this title upon

the part or portion of the said income to which such person or corporation shall be entitled under such contract. [39 Stat. L. 766.]

See the notes to § 1 of this Act *supra*, p. 312.

The Federal Farm Loan Act of July 17, 1916, ch. 245, § 26, mentioned in this section, is given in AGRICULTURE, *ante*, p. 14.

Corporations exempt from tax under the provisions of this section, and partnerships and individuals carrying on or doing the same business, or coming within the same description, are exempt from the excess profits tax imposed by the Act of Oct. 3, 1917, ch. —, title II, by virtue of section 201 thereof, *infra*, p. 343.

SEC. 12. Deductions. (a) In the case of a corporation, joint-stock company or association, or insurance company, organized in the United States, such net income shall be ascertained by deducting from the gross amount of its income received within the year from all sources —

First. All the ordinary and necessary expenses paid within the year in the maintenance and operation of its business and properties, including rentals or other payments required to be made as a condition to the continued use or possession of property to which the corporation has not taken or is not taking title, or in which it has no equity.

Second. All losses actually sustained and charged off within the year and not compensated by insurance or otherwise, including a reasonable allowance for the exhaustion, wear and tear of property arising out of its use or employment in the business or trade; (a) in the case of oil and gas wells a reasonable allowance for actual reduction in flow and production to be ascertained not by the flush flow, but by the settled production or regular flow; (b) in the case of mines a reasonable allowance for depletion thereof not to exceed the market value in the mine of the product thereof which has been mined and sold during the year for which the return and computation are made, such reasonable allowance to be made in the case of both (a) and (b) under rules and regulations to be prescribed by the Secretary of the Treasury: *Provided*, That when the allowance authorized in (a) and (b) shall equal the capital originally invested, or in case of purchase made prior to March first, nineteen hundred and thirteen, the fair market value as of that date, no further allowance shall be made; and (c) in the case of insurance companies, the net addition, if any, required by law to be made within the year to reserve funds and the sums other than dividends paid within the year on policy and annuity contracts: *Provided*, That no deduction shall be allowed for any amount paid out for new buildings, permanent improvements, or betterments made to increase the value of any property or estate, and no deduction shall be made for any amount of expense of restoring property or making good the exhaustion thereof for which an allowance is or has been made: *Provided further*, That mutual fire and mutual employers' liability and mutual workmen's compensation and mutual casualty insurance companies requiring their members to make premium deposits to provide for losses and expenses shall not return as income any portion of the premium deposits returned to their policyholders, but shall return as taxable income all income received by them from all other sources plus such portions of the premium deposits as are retained by the companies for purposes other than the payment of losses and expenses and reinsurance reserves: *Provided further*, That mutual marine insurance companies shall include in their return of gross income gross

premiums collected and received by them less amounts paid for reinsurance, but shall be entitled to include in deduction from gross income amounts repaid to policyholders on account of premiums previously paid by them and interest paid upon such amounts between the ascertainment thereof and the payment thereof, and life insurance companies shall not include as income in any year such portion of any actual premium received from any individual policyholder as shall have been paid back or credited to such individual policyholder, or treated as an abatement of premium of such individual policyholder, within such year;

Third. The amount of interest paid within the year on its indebtedness (except on indebtedness incurred for the purchase of obligations or securities the interest upon which is exempt from taxation as income under this title) to an amount of such indebtedness not in excess of the sum of (a) the entire amount of the paid-up capital stock outstanding at the close of the year, or, if no capital stock, the entire amount of capital employed in the business at the close of the year, and (b) one-half of its interest-bearing indebtedness then outstanding: *Provided*, That for the purpose of this title preferred capital stock shall not be considered interest-bearing indebtedness, and interest or dividends paid upon this stock shall not be deductible from gross income: *Provided further*, That in cases wherein shares of capital stock are issued without par or nominal value, the amount of paid-up capital stock, within the meaning of this section, as represented by such shares, will be the amount of cash, or its equivalent, paid or transferred to the corporation as a consideration for such shares: *Provided further*, That in the case of indebtedness wholly secured by property collateral tangible or intangible, the subject of sale or hypothecation in the ordinary business of such corporation, joint-stock company or association as a dealer only in the property constituting such collateral, or in loaning the funds thereby procured, the total interest paid by such corporation, company, or association within the year on any such indebtedness may be deducted as a part of its expenses of doing business, but interest on such indebtedness shall only be deductible on an amount of such indebtedness not in excess of the actual value of such property collateral: *Provided further*, That in the case of bonds or other indebtedness, which have been issued with a guaranty that the interest payable thereon shall be free from taxation, no deduction for the payment of the tax herein imposed, or any other tax paid pursuant to such guaranty, shall be allowed; and in the case of a bank, banking association, loan or trust company, interest paid within the year on deposits or on moneys received for investment and secured by interest-bearing certificates of indebtedness issued by such bank, banking association, loan or trust company shall be deducted;

Fourth. Taxes paid within the year imposed by the authority of the United States (except income and excess profits taxes), or of its Territories, or possessions, or any foreign country, or by the authority of any State, county, school district, or municipality, or other taxing subdivision of any State, not including those assessed against local benefits.

(b) In the case of a corporation, joint-stock company or association, or insurance company, organized, authorized, or existing under the laws of any foreign country, such net income shall be ascertained by deducting

from the gross amount of its income received within the year from all sources within the United States —

First. All the ordinary and necessary expenses actually paid within the year out of earnings in the maintenance and operation of its business and property within the United States, including rentals or other payments required to be made as a condition to the continued use or possession of property to which the corporation has not taken or is not taking title, or in which it has no equity.

Second. All losses actually sustained within the year in business or trade conducted by it within the United States and not compensated by insurance or otherwise, including a reasonable allowance for the exhaustion, wear and tear of property arising out of its use or employment in the business or trade; (a) and in the case (a) of oil and gas wells a reasonable allowance for actual reduction in flow and production to be ascertained not by the flush flow, but by the settled production or regular flow; (b) in the case of mines a reasonable allowance for depletion thereof not to exceed the market value in the mine of the product thereof which has been mined and sold during the year for which the return and computation are made, such reasonable allowance to be made in the case of both (a) and (b) under rules and regulations to be prescribed by the Secretary of the Treasury: *Provided,* That when the allowance authorized in (a) and (b) shall equal the capital originally invested, or in case of purchase made prior to March first, nineteen hundred and thirteen, the fair market value as of that date, no further allowance shall be made; and (c) in the case of insurance companies, the net addition, if any, required by law to be made within the year to reserve funds and the sums other than dividends paid within the year on policy and annuity contracts: *Provided,* That no deduction shall be allowed for any amount paid out for new buildings, permanent improvements, or betterments, made to increase the value of any property or estate, and no deduction shall be made for any amount of expense of restoring property or making good the exhaustion thereof for which an allowance is or has been made: *Provided, further,* That mutual fire and mutual employers' liability and mutual workmen's compensation and mutual casualty insurance companies requiring their members to make premium deposits to provide for losses and expenses shall not return as income any portion of the premium deposits returned to their policyholders, but shall return as taxable income all income received by them from all other sources plus such portions of the premium deposits as are retained by the companies for purposes other than the payment of losses and expenses and reinsurance reserves: *Provided further,* That mutual marine insurance companies shall include in their return of gross income gross premiums collected and received by them less amounts paid for reinsurance, but shall be entitled to include in deductions from gross income amounts repaid to policyholders on account of premiums previously paid by them, and interest paid upon such amounts between the ascertainment thereof and the payment thereof, and life insurance companies shall not include as income in any year such portion of any actual premium received from any individual policyholder as shall have been paid back or credited to such individual policyholder, or treated as an abatement of premium of such individual policyholder, within such year;

Third. The amount of interest paid within the year on its indebtedness (except on indebtedness incurred for the purchase of obligations or securities the interest upon which is exempt from taxation as income under this title) to an amount of such indebtedness not in excess of the proportion of the sum of (a) the entire amount of the paid-up capital stock outstanding at the close of the year, or, if no capital stock, the entire amount of the capital employed in the business at the close of the year, and (b) one-half of its interest-bearing indebtedness then outstanding, which the gross amount of its income for the year from business transacted and capital invested within the United States bears to the gross amount of its income derived from all sources within and without the United States: *Provided*, That in the case of bonds or other indebtedness which have been issued with a guaranty that the interest payable thereon shall be free from taxation, no deduction for the payment of the tax herein imposed or any other tax paid pursuant to such guaranty shall be allowed; and in case of a bank, banking association, loan or trust company, or branch thereof, interest paid within the year on deposits by or on moneys received for investment from either citizens or residents of the United States and secured by interest-bearing certificates of indebtedness issued by such bank, banking association, loan or trust company, or branch thereof;

Fourth. Taxes paid within the year imposed by the authority of the United States (except income and excess profits taxes), or of its Territories, or possessions, or by the authority of any State, county, school district, or municipality, or other taxing subdivision of any State, paid within the United States, not including those assessed against local benefits.

(c) In the case of assessment insurance companies, whether domestic or foreign, the actual deposit of sums with State or Territorial officers, pursuant to law, as additions to guarantee or reserve funds shall be treated as being payments required by law to reserve funds. [39 Stat. L. 767, as amended by — Stat. L. —.]

See the notes to § 1 of this Act, *supra*, p. 312.

Paragraphs "Third" and "Fourth" of subdivision (a) and paragraphs "Third" and "Fourth" of subdivision (b) of this section were amended to read as here given by the Act of Oct. 3, 1917, ch. —, Title XII, § 1208. These paragraphs as originally enacted, were, respectively, as follows:

"[Subdivision (a)]. *Third.* The amount of interest paid within the year on its indebtedness to an amount of such indebtedness not in excess of the sum of (a) the entire amount of the paid-up capital stock outstanding at the close of the year, or, if no capital stock, the entire amount of capital employed in the business at the close of the year, and (b) one-half of its interest-bearing indebtedness then outstanding: *Provided*, That for the purpose of this title preferred capital stock shall not be considered interest-bearing indebtedness, and interest or dividends paid upon this stock shall not be deductible from gross income: *Provided further*, That in cases wherein shares of capital stock are issued without par or nominal value, the amount of paid-up capital stock, within the meaning of this section, as represented by such shares, will be the amount of cash, or its equivalent, paid or transferred to the corporation as a consideration for such shares: *Provided further*, That in the case of indebtedness wholly secured by property collateral, tangible or intangible, the subject of sale or hypothecation in the ordinary business of such corporation, joint-stock company or association as a dealer only in the property constituting such collateral, or in loaning the funds thereby procured, the total interest paid by such corporation, company, or association within the year on any such indebtedness may be deducted as a part of its expenses of doing business, but interest on such indebtedness shall only be deductible on an amount of such indebtedness not in excess of the actual value of such property collateral: *Provided further*, That in the case of bonds or other indebtedness, which have been issued with a guaranty that the interest payable thereon shall be free from taxation, no deduction for the payment of the tax herein imposed, or any other

tax paid pursuant to such guaranty, shall be allowed; and in the case of a bank, banking association, loan or trust company, interest paid within the year on deposits or on moneys received for investment and secured by interest-bearing certificates of indebtedness issued by such bank, banking association, loan or trust company;

"*Fourth.* Taxes paid within the year imposed by the authority of the United States, or its Territories, or possessions, or any foreign country, or under the authority of any State, county, school district, or municipality, or other taxing subdivision of any State, not including those assessed against local benefits."

"[Subdivision (b)]. *Third.* The amount of interest paid within the year on its indebtedness to an amount of such indebtedness not in excess of the proportion of the sum of (a) the entire amount of the paid-up capital stock outstanding at the close of the year, or, if no capital stock, the entire amount of the capital employed in the business at the close of the year, and (b) one-half of its interest-bearing indebtedness then outstanding, which the gross amount of its income for the year from business transacted and capital invested within the United States bears to the gross amount of its income derived from all sources within and without the United States: *Provided*, That in the case of bonds or other indebtedness which have been issued with a guaranty that the interest payable thereon shall be free from taxation, no deduction for the payment of the tax herein imposed or any other tax paid pursuant to such guaranty shall be allowed; and in case of a bank, banking association, loan or trust company, or branch thereof, interest paid within the year on deposits by or on moneys received for investment from either citizens or residents of the United States and secured by interest-bearing certificates of indebtedness issued by such bank, banking association, loan or trust company, or branch thereof;

"*Fourth.* Taxes paid within the year imposed by the authority of the United States, or its Territories, or possessions, or under the authority of any State, county, school district, or municipality, or other taxing subdivision of any State, paid within the United States, not including those assessed against local benefits."

SEC. 13. Returns. (a) The tax shall be computed upon the net income, as thus ascertained, received within each preceding calendar year ending December thirty-first: *Provided*, That any corporation, joint-stock company or association, or insurance company, subject to this tax, may designate the last day of any month in the year as the day of the closing of its fiscal year and shall be entitled to have the tax payable by it computed upon the basis of the net income ascertained as herein provided for the year ending on the day so designated in the year preceding the date of assessment instead of upon the basis of the net income for the calendar year preceding the date of assessment; and it shall give notice of the day it has thus designated as the closing of its fiscal year to the collector of the district in which its principal business office is located at any time not less than thirty days prior to the first day of March of the year in which its return would be filed if made upon the basis of the calendar year;

(b) Every corporation, joint-stock company or association, or insurance company, subject to the tax herein imposed, shall, on or before the first day of March, nineteen hundred and seventeen, and the first day of March in each year thereafter, or, if it has designated a fiscal year for the computation of its tax, then within sixty days after the close of such fiscal year ending prior to December thirty-first, nineteen hundred and sixteen, and the close of each such fiscal year thereafter, render a true and accurate return of its annual net income in the manner and form to be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, and containing such facts, data, and information as are appropriate and in the opinion of the commissioner necessary to determine the correctness of the net income returned and to carry out the provisions of this title. The return shall be sworn to by the president, vice president, or other principal officer, and by the treasurer or assistant treas-

urer. The return shall be made to the collector of the district in which is located the principal office of the corporation, company, or association, where are kept its books of account and other data from which the return is prepared, or in the case of a foreign corporation, company, or association, to the collector of the district in which is located its principal place of business in the United States, or if it have no principal place of business, office, or agency in the United States, then to the collector of internal revenue at Baltimore, Maryland. All such returns shall as received be transmitted forthwith by the collector to the Commissioner of Internal Revenue;

(c) In cases wherein receivers, trustees in bankruptcy, or assignees are operating the property or business of corporations, joint-stock companies or associations, or insurance companies, subject to tax imposed by this title, such receivers, trustees, or assignees shall make returns of net income as and for such corporations, joint-stock companies or associations, and insurance companies, in the same manner and form as such organizations are hereinbefore required to make returns, and any income tax due on the basis of such returns made by receivers, trustees, or assignees shall be assessed and collected in the same manner as if assessed directly against the organizations of whose businesses or properties they have custody and control;

(d) A corporation, joint-stock company or association, or insurance company, keeping accounts upon any basis other than that of actual receipts and disbursements, unless such other basis does not clearly reflect its income, may, subject to regulations made by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, make its return upon the basis upon which its accounts are kept, in which case the tax shall be computed upon its income as so returned;

(e) All the provisions of this title relating to the tax authorized and required to be deducted and withheld and paid to the officer of the United States Government authorized to receive the same from the income of non-resident alien individuals from sources within the United States shall be made applicable to the tax imposed by subdivision (a) of section ten upon incomes derived from interest upon bonds and mortgages or deeds of trust or similar obligations of domestic or other resident corporations, joint-stock companies or associations, and insurance companies by nonresident alien firms, copartnerships, companies, corporations, joint-stock companies or associations, and insurance companies, not engaged in business or trade within the United States and not having any office or place of business therein.

(f) Likewise, all the provisions of this title relating to the tax authorized and required to be deducted and withheld and paid to the officer of the United States Government authorized to receive the same from the income of nonresident alien individuals from sources within the United States shall be made applicable to income derived from dividends upon the capital stock or from the net earnings of domestic or other resident corporations, joint-stock companies or associations, and insurance companies by non-resident alien companies, corporations, joint-stock companies or associations, and insurance companies not engaged in business or trade within

the United States and not having any office or place of business therein.
[39 Stat. L. 770, as amended by — Stat. L. —.]

See the notes to § 1 of this Act, *supra*, p. 312.

Subdivision (e) of this section was amended to read as here given by the Act of Oct. 3, 1917, ch. —, title XII, § 1208. Said subdivision as originally enacted was as follows:

"(e) All the provisions of this title relating to the tax authorized and required to be deducted and withheld and paid to the officer of the United States Government authorized to receive the same from the income of nonresident alien individuals from sources within the United States shall be made applicable to incomes derived from interest upon bonds and mortgages or deeds of trust or similar obligations of domestic or other resident corporations, joint-stock companies or associations, and insurance companies by nonresident alien firms, copartnerships, companies, corporations, joint-stock companies or associations, and insurance companies not engaged in business or trade within the United States and not having any office or place of business therein."

SEC. 14. Assessment and administration. (a) All assessments shall be made and the several corporations, joint-stock companies or associations and insurance companies shall be notified of the amount for which they are respectively liable on or before the first day of June of each successive year, and said assessment shall be paid on or before the fifteenth day of June: *Provided*, That every corporation, joint-stock company or association, and insurance company, computing taxes upon the income of the fiscal year which it may designate in the manner hereinbefore provided, shall pay the taxes due under its assessment within one hundred and five days after the date upon which it is required to file its list or return of income for assessment; except in cases of refusal or neglect to make such return, and in case of erroneous, false, or fraudulent returns, in which cases the Commissioner of Internal Revenue shall, upon the discovery thereof, at any time within three years after said return is due, make a return upon information obtained as provided for in this title or by existing law; and the assessment made by the Commissioner of Internal Revenue thereon shall be paid by such corporation, joint-stock company or association, or insurance company immediately upon notification of the amount of such assessment; and to any sum or sums due and unpaid after the fifteenth day of June in any year, or after one hundred and five days from the date on which the return of income is required to be made by the taxpayer, and after ten days' notice and demand thereof by the collector, there shall be added the sum of five per centum on the amount of tax unpaid and interest at the rate of one per centum per month upon said tax from the time the same becomes due: *Provided*, That upon the examination of any return of income made pursuant to this title, the Act of August fifth, nineteen hundred and nine, entitled, "An Act to provide revenue, equalize duties and encourage the industries of the United States, and for other purposes," and the Act of October third, nineteen hundred and thirteen, entitled, "An Act to reduce tariff duties and to provide revenue for the Government, and for other purposes," if it shall appear that amounts of tax have been paid in excess of those properly due, the taxpayer shall be permitted to present a claim for refund thereof notwithstanding the provisions of section thirty-two hundred and twenty-eight of the Revised Statutes;

(b) When the assessment shall be made, as provided in this title, the returns, together with any corrections thereof which may have been made by the commissioner, shall be filed in the office of the Commissioner of

Internal Revenue and shall constitute public records and be open to inspection as such: *Provided*, That any and all such returns shall be open to inspection only upon the order of the President, under rules and regulations to be prescribed by the Secretary of the Treasury and approved by the President: *Provided further*, That the proper officers of any State imposing a general income tax may, upon the request of the governor thereof, have access to said returns or to an abstract thereof, showing the name and income of each such corporation, joint-stock company or association, or insurance company, at such times and in such manner as the Secretary of the Treasury may prescribe;

(c) If any of the corporations, joint-stock companies or associations, or insurance companies aforesaid shall refuse or neglect to make a return at the time or times hereinbefore specified in each year, or shall render a false or fraudulent return, such corporation, joint-stock company or association, or insurance company shall be liable to a penalty of not exceeding \$10,000: *Provided*, That the Commissioner of Internal Revenue shall have authority, in the case of either corporations or individuals, to grant a reasonable extension of time in meritorious cases, as he may deem proper. * * * [39 Stat. L. 772.]

See the notes to § 1 of this Act, *supra*, p. 312.

A further subdivision (d) of this section amended R. S. sec. 3225 and is given, *supra*, p. 279.

SEC. 1212. [Taxes withheld by withholding agent — release.] That any amount heretofore withheld by any withholding agent as required by Title I of such Act of September eighth, nineteen hundred and sixteen, on account of the tax imposed upon the income of any individual, a citizen or resident of the United States, for the calendar year nineteen hundred and seventeen, except in the cases covered by subdivision (c) of section nine of such Act, as amended by this Act, shall be released and paid over to such individual, and the entire tax upon the income of such individual for such year shall be assessed and collected in the manner prescribed by such Act as amended by this Act. [— Stat. L. —.]

This section is the final section of title XII of the Act of Oct. 3, 1917, ch. —. See the notes to section 1000 of this Act, *infra*, p. 382, and see also the notes to the following paragraph of the text.

SECTION 1. [Normal tax — amount.] That in addition to the normal tax imposed by subdivision (a) of section one of the Act entitled "An Act to increase the revenue, and for other purposes," approved September eighth, nineteen hundred and sixteen, there shall be levied, assessed, collected, and paid a like normal tax of two per centum upon the income of every individual, a citizen or resident of the United States, received in the calendar year nineteen hundred and seventeen and every calendar year thereafter. [— Stat. L. —.]

The foregoing section 1 and the following sections 2-5 constitute "Title 1.— War Income Tax" of the Act of Oct. 3, 1917, ch. —, entitled "An Act To provide revenue to defray war expenses, and for other purposes." General administrative pro-

visions of this Act, which affect these sections and should be read in connection therewith, are given in subdivision XV of this title, *infra*, p. 374.

The Act of Sept. 8, 1916, ch. 463, § 1, subdivision (a), mentioned in this section is given *supra*, p. 312.

SEC. 2. [Additional income tax.] That in addition to the additional tax imposed by subdivision (b) of section one of such Act of September eighth, nineteen hundred and sixteen, there shall be levied, assessed, collected, and paid a like additional tax upon the income of every individual received in the calendar year nineteen hundred and seventeen and every calendar year thereafter, as follows:

One per centum per annum upon the amount by which the total net income exceeds \$5,000 and does not exceed \$7,500;

Two per centum per annum upon the amount by which the total net income exceeds \$7,500 and does not exceed \$10,000;

Three per centum per annum upon the amount by which the total net income exceeds \$10,000 and does not exceed \$12,500;

Four per centum per annum upon the amount by which the total net income exceeds \$12,500 and does not exceed \$15,000;

Five per centum per annum upon the amount by which the total net income exceeds \$15,000 and does not exceed \$20,000;

Seven per centum per annum upon the amount by which the total net income exceeds \$20,000 and does not exceed \$40,000;

Ten per centum per annum upon the amount by which the total net income exceeds \$40,000 and does not exceed \$60,000;

Fourteen per centum per annum upon the amount by which the total net income exceeds \$60,000 and does not exceed \$80,000;

Eighteen per centum per annum upon the amount by which the total net income exceeds \$80,000 and does not exceed \$100,000;

Twenty-two per centum per annum upon the amount by which the total net income exceeds \$100,000 and does not exceed \$150,000;

Twenty-five per centum per annum upon the amount by which the total net income exceeds \$150,000 and does not exceed \$200,000;

Thirty per centum per annum upon the amount by which the total net income exceeds \$200,000 and does not exceed \$250,000;

Thirty-four per centum per annum upon the amount by which the total net income exceeds \$250,000 and does not exceed \$300,000;

Thirty-seven per centum per annum upon the amount by which the total net income exceeds \$300,000 and does not exceed \$500,000;

Forty per centum per annum upon the amount by which the total net income exceeds \$500,000 and does not exceed \$750,000;

Forty-five per centum per annum upon the amount by which the total net income exceeds \$750,000 and does not exceed \$1,000,000;

Fifty per centum per annum upon the amount by which the total net income exceeds \$1,000,000. [— *Stat. L.* —.]

See the note to the preceding section 1 of this Act.

The Act of Sept. 8, 1916, ch. 463, § 1, subdivision (b), mentioned in this section is given, *supra*, p. 312.

SEC. 3. [Taxes — how computed, levied, assessed, collected and paid — personal exemptions — income derived from interest.] That the taxes imposed by sections one and two of this Act shall be computed, levied,

assessed, collected, and paid upon the same basis and in the same manner as the similar taxes imposed by section one of such Act of September eighth, nineteen hundred and sixteen, except that in the case of the tax imposed by section one of this Act (a) the exemptions of \$3,000 and \$4,000 provided in section seven of such Act of September eighth, nineteen hundred and sixteen, as amended by this Act, shall be, respectively, \$1,000 and \$2,000, and (b) the returns required under subdivisions (b) and (c) of section eight of such Act as amended by this Act shall be required in the case of net incomes of \$1,000 or over, in the case of unmarried persons, and \$2,000 or over in the case of married persons, instead of \$3,000 or over, as therein provided, and (c) the provisions of subdivision (c) of section nine of such Act, as amended by this Act, requiring the normal tax of individuals on income derived from interest to be deducted and withheld at the source of the income shall not apply to the new two per centum normal tax prescribed in section one of this Act until on and after January first, nineteen hundred and eighteen, and thereafter only one two per centum normal tax shall be deducted and withheld at the source under the provisions of such subdivision (c), and any further normal tax for which the recipient of such income is liable under this Act or such Act of September eighth, nineteen hundred and sixteen, as amended by this Act, shall be paid by such recipient. [— *Stat. L.* —.]

See the notes to section 1 of this Act, *supra*, p. 336.

The Act of Sept. 8, 1916, ch. 463, §§ 7, 8, and 9, mentioned in this section is given, *supra*, p. 319.

SEC. 4. [Additional tax on corporations, insurance companies, etc.—computation, etc.] That in addition to the tax imposed by subdivision (a) of section ten of such Act of September eighth, nineteen hundred and sixteen, as amended by this Act, there shall be levied, assessed, collected, and paid a like tax of four per centum upon the income received in the calendar year nineteen hundred and seventeen and every calendar year thereafter, by every corporation, joint-stock company or association, or insurance company, subject to the tax imposed by that subdivision of that section, except that if it has fixed its own fiscal year, the tax imposed by this section for the fiscal year ending during the calendar year nineteen hundred and seventeen shall be levied, assessed, collected, and paid only on that proportion of its income for such fiscal year which the period between January first, nineteen hundred and seventeen, and the end of such fiscal year bears to the whole of such fiscal year.

The tax imposed by this section shall be computed, levied, assessed, collected, and paid upon the same incomes and in the same manner as the tax imposed by subdivision (a) of section ten of such Act of September eighth, nineteen hundred and sixteen, as amended by this Act, except that for the purpose of the tax imposed by this section the income embraced in a return of a corporation, joint-stock company or association, or insurance company, shall be credited with the amount received as dividends upon the stock or from the net earnings of any other corporation, joint-stock company or association, or insurance company, which is taxable upon its net income as provided in this title. [— *Stat. L.* —.]

See the notes to section 1 of this Act, *supra*, p. 336.

The Act of Sept. 8, 1916, ch. 463, § 10, mentioned in this section is given, *supra*, p. 325.

SEC. 5. [Territory affected by title.] That the provisions of this title shall not extend to Porto Rico or the Philippine Islands, and the Porto Rican or Philippine Legislature shall have power by due enactment to amend, alter, modify, or repeal the income tax laws in force in Porto Rico or the Philippine Islands, respectively. [— *Stat. L.* —.]

See the notes to section 1 of this Act, *supra*, p. 336.

VIII. EXCISE TAX

SEC. 600. [Automobiles, musical instruments, moving picture films, jewelry, games and sporting goods, toilet articles, medicines, chewing gum, cameras.] That there shall be levied, assessed, collected, and paid —

(a) Upon all automobiles, automobile trucks, automobile wagons, and motorcycles, sold by the manufacturer, producer, or importer, a tax equivalent to three per centum of the price for which so sold; and

(b) Upon all piano players, graphaphones, phonographs, talking machines, and records used in connection with any musical instrument, piano player, graphaphone, phonograph, or talking machine, sold by the manufacturer, producer, or importer, a tax equivalent to three per centum of the price for which so sold; and

(c) Upon all moving-picture films (which have not been exposed) sold by the manufacturer or importer a tax equivalent to one-fourth of 1 cent per linear foot; and

(d) Upon all positive moving-picture films (containing a picture ready for projection) sold or leased by the manufacturer, producer, or importer, a tax equivalent to one-half of 1 cent per linear foot; and

(e) Upon any article commonly or commercially known as jewelry, whether real or imitation, sold by the manufacturer, producer, or importer thereof, a tax equivalent to three per centum of the price for which so sold; and

(f) Upon all tennis rackets, golf clubs, baseball bats, lacrosse sticks, balls of all kinds, including baseballs, foot balls, tennis, golf, lacrosse, billiard and pool balls, fishing rods and reels, billiard and pool tables, chess and checker boards, and pieces, dice, games, and parts of games, except playing cards and children's toys and games, sold by the manufacturer, producer, or importer, a tax equivalent to three per centum of the price for which so sold; and

(g) Upon all perfumes, essences, extracts, toilet waters, cosmetics, petroleum jellies, hair oils, pomades, hair dressings, hair restoratives, hair dyes, tooth and mouth washes, dentifrices, tooth pastes, aromatic cachous, toilet soaps and powders, or any similar substances, article, or preparation by whatsoever name known or distinguished, upon all of the above which are used or applied or intended to be used or applied for toilet purposes, and which are sold by the manufacturer, importer, or producer, a tax equivalent to two per centum of the price for which so sold; and

(h) Upon all pills, tablets, powders, tinctures, troches or lozenges, sirups, medicinal cordials or bitters, anodynes, tonics, plasters, liniments, salves, ointments, pastes, drops, waters (except those taxed under section three

hundred and thirteen of this Act), essences, spirits, oils, and all medicinal preparations, compounds, or compositions whatsoever, the manufacturer or producer of which claims to have any private formula, secret, or occult art for making or preparing the same, or has or claims to have any exclusive right or title to the making or preparing the same, or which are prepared, uttered, vended, or exposed for sale under any letters patent, or trademark, or which, if prepared by any formula, published or unpublished, are held out or recommended to the public by the makers, venders, or proprietors thereof as proprietary medicines or medicinal proprietary articles or preparations, or as remedies or specifics for any disease, diseases, or affection whatever affecting the human or animal body, and which are sold by the manufacturer, producer, or importer, a tax equivalent to two per centum of the price for which so sold; and

(i) Upon all chewing gum or substitute therefor sold by the manufacturer, producer, or importer, a tax equivalent to two per centum of the price for which so sold; and

(j) Upon all cameras sold by the manufacturer, producer, or importer, a tax equivalent to three per centum of the price for which so sold.
[— *Stat. L.* —.]

The foregoing section 600 and the following sections 601–603 constitute “Title VI.—War Excise Tax” of an Act of Oct. 3, 1917, ch. —, entitled “An Act To provide revenue to defray war expenses, and for other purposes.” General administrative provisions which affect these sections and should be read in connection therewith are given in subdivision XV of this title, *infra*, p. 374.

SEC. 601. [Returns.] That each manufacturer, producer, or importer of any of the articles enumerated in section six hundred shall make monthly returns under oath in duplicate and pay the taxes imposed on such articles by this title to the collector of internal revenue for the district in which is located the principal place of business. Such returns shall contain such information and be made at such times and in such manner as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may by regulations prescribe. [— *Stat. L.* —.]

See the notes to the preceding section 600 of this Act.

SEC. 602. [Articles on hand at time of taking effect of Act.] That upon all articles enumerated in subdivisions (a), (b), (e), (f), (g), (h), (i), or (j) of section six hundred, which on the day of this Act is passed are held and intended for sale by any person, corporation, partnership, or association, other than (1) a retailer who is not also a wholesaler, or (2) the manufacturer, producer, or importer thereof, there shall be levied, assessed, collected, and paid a tax equivalent to one-half the tax imposed by each such subdivision upon the sale of the articles therein enumerated. This tax shall be paid by the person, corporation, partnership, or association so holding such articles.

The taxes imposed by this section shall be assessed, collected, and paid in the same manner as provided in section ten hundred and two in the case of additional taxes upon articles upon which the tax imposed by existing law has been paid.

Nothing in this section shall be construed to impose a tax upon articles sold and delivered prior to May ninth, nineteen hundred and seventeen,

where the title is reserved in the vendor as security for the payment of the purchase money. [— *Stat. L.* —.]

See the notes to section 600 of this Act, *supra*, p. 339.

SEC. 603. [Yachts and boats.] That on the day this Act takes effect, and thereafter on July first in each year, and also at the time of the original purchase of a new boat by a user, if on any other date than July first, there shall be levied, assessed, collected, and paid upon the use of yachts, pleasure boats, power boats, and sailing boats, of over five net tons, and motor boats with fixed engines, not used exclusively for trade or national defense, or not built according to plans and specifications approved by the Navy Department, an excise tax to be based on each yacht or boat, at rates as follows: Yachts, pleasure boats, power boats, motor boats with fixed engines, and sailing boats, of over five net tons, length not over fifty feet, 50 cents for each foot, length over fifty feet and not over one hundred feet, \$1 for each foot, length over one hundred feet, \$2 for each foot; motor boats of not over five net tons with fixed engines, \$5.

In determining the length of such yachts, pleasure boats, power boats, motor boats with fixed engines, and sailing boats, the measurement of over-all length shall govern.

In the case of a tax imposed at the time of the original purchase of a new boat on any other date than July first, the amount to be paid shall be the same number of twelfths of the amount of the tax as the number of calendar months, including the month of sale, remaining prior to the following July first. [— *Stat. L.* —.]

See the notes to section 600 of this Act, *supra*, p. 339.

IX. EXCESS PROFITS

SEC. 200. [Definitions — “corporation” — “domestic” — “United States” — “taxable year” — “pre-war period” — “trade” — “business” — “net income.”] That when used in this title —

The term “corporation” includes joint-stock companies or associations and insurance companies;

The term “domestic” means created under the law of the United States, or of any State, Territory, or District thereof, and the term “foreign” means created under the law of any other possession of the United States or of any foreign country or government;

The term “United States” means only the States, the Territories of Alaska and Hawaii, and the District of Columbia;

The term “taxable year” means the twelve months ending December thirty-first, excepting in the case of a corporation or partnership which has fixed its own fiscal year, in which case it means such fiscal year. The first taxable year shall be the year ending December thirty-first, nineteen hundred and seventeen, except that in the case of a corporation or partnership which has fixed its own fiscal year, it shall be the fiscal year ending during the calendar year nineteen hundred and seventeen. If a corporation or partnership, prior to March first, nineteen hundred and eighteen, makes a return covering its own fiscal year, and includes therein the income received

during that part of the fiscal year falling within the calendar year nineteen hundred and sixteen, the tax for such taxable year shall be that proportion of the tax computed upon the net income during such full fiscal year which the time from January first, nineteen hundred and seventeen, to the end of such fiscal year bears to the full fiscal year; and

The term "prewar period" means the calendar years nineteen hundred and eleven, nineteen hundred and twelve, and nineteen hundred and thirteen, or, if a corporation or partnership was not in existence or an individual was not engaged in a trade or business during the whole of such period, then as many of such years during the whole of which the corporation or partnership was in existence or the individual was engaged in the trade or business.

The terms "trade" and "business" include professions and occupations.

The term "net income" means in the case of a foreign corporation or partnership or a nonresident alien individual, the net income received from sources within the United States. [— Stat. L. —.]

The foregoing section 200 and the following sections 201-214 constitute "Title II—War Excess Profits Tax" of the Act of Oct. 3, 1917, ch. —, entitled "An Act To provide revenue to defray war expenses, and for other purposes." General administrative provisions of this Act which affect these sections and should be read in connection therewith are given under subdivision XV of this title, *infra*, p. 374.

A former excess profits tax law was contained in the Act of March 3, 1917, ch. 159, Title II, §§ 200-207, 39 Stat. L. 1000. This was repealed by section 214 of this Act, *infra*, p. 350, which provided that any amount heretofore or hereafter paid on account of the repealed Act should be credited toward the payment of the tax imposed by this title, and if the amount so paid exceeded the amount of such tax the excess should be refunded as a tax erroneously collected. The provisions of the repealed Act were as follows:

"Sec. 200. That when used in this title—

"The term 'corporation' includes joint-stock companies or associations, and insurance companies;

"The term 'United States' means only the States, the Territories of Alaska and Hawaii, and the District of Columbia; and

"The term 'taxable year' means the twelve months ending December thirty-first, except in the case of a corporation or partnership allowed to fix its own fiscal year, in which case it means such fiscal year. The first taxable year shall be the year ending December thirty-first, nineteen hundred and seventeen.

"Sec. 201. That in addition to the taxes under existing laws there shall be levied, assessed, collected, and paid for each taxable year upon the net income of every corporation and partnership organized, authorized, or existing under the laws of the United States, or of any State, Territory, or District thereof, no matter how created or organized, excepting income derived from the business of life, health, and accident insurance combined in one policy issued on the weekly premium payment plan, a tax of eight per centum of the amount by which such net income exceeds the sum of (a) \$5,000 and (b) eight per centum of the actual capital invested.

"Every foreign corporation and partnership, including corporations and partnerships of the Philippine Islands and Porto Rico, shall pay for each taxable year a like tax upon the amount by which its net income received from all sources within the United States exceeds the sum of (a) eight per centum of the actual capital invested and used or employed in the business in the United States, and (b) that proportion of \$5,000 which the entire actual capital invested and used or employed in the business in the United States bears to the entire actual capital invested; and in case no such capital is used or employed in the business in the United States the tax shall be imposed upon that portion of such net income which is in excess of the sum of (a) eight per centum of that proportion of the entire actual capital invested and used or employed in the business which the net income from sources within the United States bears to the entire net income, and (b) that proportion of \$5,000 which the net income from sources within the United States bears to the entire net income.

"Sec. 202. That for the purpose of this title, actual capital invested means (1) actual cash paid in, (2) the actual cash value, at the time of payment, of assets other than cash paid in, and (3) paid in or earned surplus and undivided profits

used or employed in the business; but does not include money or other property borrowed by the corporation or partnership.

"SEC. 203. That the tax herein imposed upon corporations and partnerships shall be computed upon the basis of the net income shown by their income tax returns under Title I of the Act entitled 'An Act to increase the revenue, and for other purposes,' approved September eighth, nineteen hundred and sixteen, or under this title, and shall be assessed and collected at the same time and in the same manner as the income tax due under Title I of such Act of September eighth, nineteen hundred and sixteen: *Provided*, That for the purpose of this title a partnership shall have the same privilege with reference to fixing its fiscal year as is accorded corporations under section thirteen (a) of Title I of such Act of September eighth, nineteen hundred and sixteen: *And provided further*, That where a corporation or partnership makes return prior to March first, nineteen hundred and eighteen, covering its own fiscal year and includes therein any income received during the calendar year ending December thirty-first, nineteen hundred and sixteen, the tax herein imposed shall be that proportion of the tax based upon such full fiscal year which the time from January first, nineteen hundred and seventeen, to the end of such fiscal year bears to the full fiscal year.

"SEC. 204. That corporations exempt from tax under the provisions of section eleven of Title I of the Act approved September eighth, nineteen hundred and sixteen, and partnerships carrying on or doing the same business shall be exempt from the provisions of this title, and the tax imposed by this title shall not attach to incomes of partnerships derived from agriculture or from personal services.

"SEC. 205. That every corporation having a net income of \$5,000 or more for the taxable year making a return under Title I of such Act of September eighth, nineteen hundred and sixteen, shall for the purposes of this title include in such return a detailed statement of the actual capital invested.

"Every partnership having a net income of \$5,000 or more for the taxable year shall render a correct return of the income of the partnership for the taxable year, setting forth specifically the actual capital invested and the gross income for such year and the deductions hereinafter allowed. Such returns shall be rendered at the same time and in the same manner and form as is prescribed for income-tax returns under Title I of such Act of September eighth, nineteen hundred and sixteen. In computing net income of a partnership for the purposes of this title there shall be allowed like deductions as are allowed to individuals in sections five (a) and six (a) of such Act of September eighth, nineteen hundred and sixteen.

"SEC. 206. That all administrative, special, and general provisions of law, including the laws in relation to the assessment, remission, collection, and refund of internal-revenue taxes not heretofore specifically repealed and not inconsistent with the provisions of this title are hereby extended and made applicable to all the provisions of this title and to the tax herein imposed, and all provisions of Title I of such Act of September eighth, nineteen hundred and sixteen, relating to returns and payment of the tax therein imposed, including penalties, are hereby made applicable to the tax required by this title.

"SEC. 207. That the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall make all necessary regulations for carrying out the provisions of this title, and may require any corporation or partnership subject to the provisions of this title to furnish him with such facts, data, and information as in his judgment are necessary to collect the tax provided for in this title."

SEC. 201. [Amount of tax—incomes affected—incomes excepted.]
That in addition to the taxes under the existing law and under this act there shall be levied, assessed, collected, and paid for each taxable year upon the income of every corporation, partnership, or individual, a tax (hereinafter in this title referred to as the tax) equal to the following percentages of the net income:

Twenty per centum of the amount of the net income in excess of the deduction (determined as hereinafter provided) and not in excess of fifteen per centum of the invested capital for the taxable year;

Twenty-five per centum of the amount of the net income in excess of fifteen per centum and not in excess of twenty per centum of such capital;

Thirty-five per centum of the amount of the net income in excess of twenty per centum and not in excess of twenty-five per centum of such capital;

Forty-five per centum of the amount of the net income in excess of twenty-five per centum and not in excess of thirty-three per centum of such capital; and

Sixty per centum of the amount of the net income in excess of thirty-three per centum of such capital.

For the purpose of this title every corporation or partnership not exempt under the provisions of this section shall be deemed to be engaged in business, and all the trades and businesses in which it is engaged shall be treated as a single trade or business, and all its income from whatever source derived shall be deemed to be received from such trade or business.

This title shall apply to all trades or businesses of whatever description, whether continuously carried on or not, except—

(a) In the case of officers and employees under the United States, or any State, Territory, or the District of Columbia, or any local subdivision thereof, the compensation or fees received by them as such officers or employees;

(b) Corporations exempt from tax under the provisions of section eleven of Title I of such Act of September eighth, nineteen hundred and sixteen, as amended by this Act, and partnerships and individuals carrying on or doing the same business, or coming within the same description; and

(c) Incomes derived from the business of life, health, and accident insurance combined in one policy issued on the weekly premium payment plan. [—*Stat. L.* —.]

See the notes to the preceding section 200 of this Act.

The Act of Sept. 8, 1916, ch. 463, title I, § 11, mentioned in this section, is given *supra*, p. 327.

The tax on trades or business having no invested capital is prescribed by section 209 of this Act, *infra*, p. 348, in lieu of that prescribed by this section.

SEC. 202. [Foreign corporation or partnership — nonresident alien individual.] That the tax shall not be imposed in the case of the trade or business of a foreign corporation or partnership or a nonresident alien individual, the net income of which trade or business during the taxable year is less than \$3,000. [—*Stat. L.* —.]

See the notes to section 200 of this Act, *supra*, p. 341.

SEC. 203. [Deductions.] That for the purposes of this title the deduction shall be as follows, except as otherwise in this title provided —

(a) In the case of a domestic corporation, the sum of (1) an amount equal to the same percentage of the invested capital for the taxable year which the average amount of the annual net income of the trade or business during the prewar period was of the invested capital for the prewar period (but not less than seven or more than nine per centum of the invested capital for the taxable year), and (2) \$3,000;

(b) In the case of a domestic partnership or of a citizen or resident of the United States, the sum of (1) an amount equal to the same percentage of the invested capital for the taxable year which the average amount of the annual net income of the trade or business during the prewar period was of the invested capital for the prewar period (but not less than seven or more than nine per centum of the invested capital for the taxable year), and (2) \$6,000;

(c) In the case of a foreign corporation or partnership or of a non-resident alien individual, an amount ascertained in the same manner as provided in subdivisions (a) and (b) without any exemption of \$3,000 or \$6,000.

(d) If the Secretary of the Treasury is unable satisfactorily to determine the average amount of the annual net income of the trade or business during the prewar period, the deduction shall be determined in the same manner as provided in section two hundred and five. [— *Stat. L.*—]

See the notes to section 200 of this Act, *supra*, p. 341.

SEC. 204. [Deductions continued.] That if a corporation or partnership was not in existence, or an individual was not engaged in the trade or business, during the whole of any one calendar year during the prewar period, the deduction shall be an amount equal to eight per centum of the invested capital for the taxable year, plus in the case of a domestic corporation \$3,000, and in the case of a domestic partnership or a citizen or resident of the United States, \$6,000.

A trade or business carried on by a corporation, partnership, or individual, although formally organized or reorganized on or after January second, nineteen hundred and thirteen, which is substantially a continuation of a trade or business carried on prior to that date, shall, for the purposes of this title, be deemed to have been in existence prior to that date, and the net income and invested capital of its predecessor prior to that date shall be deemed to have been its net income and invested capital. [— *Stat. L.* —.]

See the notes to section 200 of this Act, *supra*, p. 341.

SEC. 205. [Deductions continued.] (a) That if the Secretary of the Treasury, upon complaint finds either (1) that during the prewar period a domestic corporation or partnership, or a citizen or resident of the United States, had no net income from the trade or business, or (2) that during the prewar period the percentage, which the net income was of the invested capital, was low as compared with the percentage, which the net income during such period of representative corporations, partnerships, and individuals, engaged in a like or similar trade or business, was of their invested capital, then the deduction shall be the sum of (1) an amount equal to the same percentage of its invested capital for the taxable year which the average deduction (determined in the same manner as provided in section two hundred and three, without including the \$3,000 or \$6,000 therein referred to) for such year of representative corporations, partnerships, or individuals, engaged in a like or similar trade or business, is of their average invested capital for such year plus (2) in the case of a domestic corporation \$3,000, and in the case of a domestic partnership or a citizen or resident of the United States \$6 000.

The percentage which the net income was of the invested capital in each trade or business shall be determined by the Commissioner of Internal Revenue, in accordance with regulations prescribed by him, with the approval of the Secretary of the Treasury. In the case of a corporation or partnership which fixed its own fiscal year, the percentage determined by the calendar year ending during such fiscal year shall be used.

(b) The tax shall be assessed upon the basis of the deduction determined as provided in section two hundred and three, but the taxpayer claiming the benefit of this section may at the time of making the return file a claim for abatement of the amount by which the tax so assessed exceeds a tax computed upon the basis of the deduction determined as provided in this section. In such event, collection of the part of the tax covered by such claim for abatement shall not be made until the claim is decided, but if in the judgment of the Commissioner of Internal Revenue, the interests of the United States would be jeopardized thereby he may require the claimant to give a bond in such amount and with such sureties as the commissioner may think wise to safeguard such interests, conditioned for the payment of any tax found to be due, with the interest thereon, and if such bond, satisfactory to the commissioner, is not given within such time as he prescribes, the full amount of the tax assessed shall be collected and the amount overpaid, if any, shall upon final decision of the application be refunded as a tax erroneously or illegally collected. [— *Stat. L.* —.]

See the notes to section 200 of this Act, *supra*, p. 341.

SEC. 206. [Basis for ascertainment and return of net income.] That for the purposes of this title the net income of a corporation shall be ascertained and returned (a) for the calendar years nineteen hundred and eleven and nineteen hundred and twelve upon the same basis and in the same manner as provided in section thirty-eight of the Act entitled "An Act to provide revenue, equalize duties, and encourage the industries of the United States, and for other purposes," approved August fifth, nineteen hundred and nine, except that income taxes paid by it within the year imposed by the authority of the United States shall be included; (b) for the calendar year nineteen hundred and thirteen upon the same basis and in the same manner as provided in section II of the Act entitled "An Act to reduce tariff duties and to provide revenue for the Government, and for other purposes," approved October third, nineteen hundred and thirteen, except that income taxes paid by it within the year imposed by the authority of the United States shall be included, and except that the amounts received by it as dividends upon the stock or from the net earnings of other corporations, joint-stock companies or associations, or insurance companies, subject to the tax imposed by section II of such Act of October third, nineteen hundred and thirteen, shall be deducted; and (c) for the taxable year upon the same basis and in the same manner as provided in Title I of the Act entitled "An Act to increase the revenue, and for other purposes," approved September eighth, nineteen hundred and sixteen, as amended by this Act, except that the amounts received by it as dividends upon the stock or from the net earnings of other corporations, joint-stock companies or associations, or insurance companies, subject to the tax imposed by Title I of such Act of September eighth, nineteen hundred and sixteen, shall be deducted.

The net income of a partnership or individual shall be ascertained and returned for the calendar years nineteen hundred and eleven, nineteen hundred and twelve, and nineteen hundred and thirteen, and for the taxable year, upon the same basis and in the same manner as provided in Title I of such Act of September eighth, nineteen hundred and sixteen,

as amended by this Act, except that the credit allowed by subdivision (b) of section five of such Act shall be deducted. There shall be allowed (a) in the case of a domestic partnership the same deductions as allowed to individuals in subdivision (a) of section five of such Act of September eighth, nineteen hundred and sixteen, as amended by this Act; and (b) in the case of a foreign partnership the same deductions as allowed to individuals in subdivision (a) of section six of such Act as amended by this Act. [— *Stat. L.* —.]

See the notes to section 200 of this Act, *supra*, p. 341.

For the Act of Aug. 5, 1909, ch. 6, § 36, mentioned in this section, see 1909 Supp. Fed. Stat. Ann. 829, 4 Fed. Stat. Ann. (2d ed.) 255.

For the Act of Oct 3, 1913, ch. 16, § II, mentioned in this section, see 1914 Supp. Fed. Stat. Ann. 185; 4 Fed. Stat. Ann. (2d ed.) 236.

The Act of Sept. 8, 1916, ch. 463, Title I, mentioned in this section, is given *supra*, p. 312.

SEC. 207. [“Invested capital”—meaning of term.] That as used in this title, the term “invested capital” for any year means the average invested capital for the year, as defined and limited in this title, averaged monthly.

As used in this title “invested capital” does not include stocks, bonds (other than obligations of the United States), or other assets, the income from which is not subject to the tax imposed by this title nor money or other property borrowed, and means, subject to the above limitations:

(a) In the case of a corporation or partnership: (1) Actual cash paid in, (2) the actual cash value of tangible property paid in other than cash, for stock or shares in such corporation or partnership, at the time of such payment (but in case such tangible property was paid in prior to January first, nineteen hundred and fourteen, the actual cash value of such property as of January first, nineteen hundred and fourteen, but in no case to exceed the par value of the original stocks or shares specifically issued therefor), and (3) paid in or earned surplus and undivided profits used or employed in the business, exclusive of undivided profits earned during the taxable year: *Provided*, that (a) the actual cash value of patents and copyrights paid in for stock or shares in such corporation or partnership, at the time of such payment, shall be included as invested capital, but not to exceed the par value of such stock or shares at the time of such payment, and (b) the good will, trade-marks, trade brands, the franchise of a corporation or partnership, or other intangible property, shall be included as invested capital if the corporation or partnership made payment bona fide therefor specifically as such in cash or tangible property, the value of such good will, trade-mark, trade brand, franchise, or intangible property, not to exceed the actual cash or actual cash value of the tangible property paid therefor at the time of such payment; but good will, trade-marks, trade brands, franchise of a corporation or partnership, or other intangible property, bona fide purchased, prior to March third, nineteen hundred and seventeen, for and with interests or shares in a partnership or for and with shares in the capital stock of a corporation (issued prior to March third, nineteen hundred and seventeen), in an amount not to exceed, on March third, nineteen hundred and seventeen, twenty per centum of the total interests or shares in the partnership or of

the total shares of the capital stock of the corporation, shall be included in invested capital at a value not to exceed the actual cash value at the time of such purchase, and in case of issue of stock therefor not to exceed the par value of such stock;

(b) In the case of an individual, (1) actual cash paid into the trade or business, and (2) the actual cash value of tangible property paid into the trade or business, other than cash, at the time of such payment (but in case such tangible property was paid in prior to January first, nineteen hundred and fourteen, the actual cash value of such property as of January first, nineteen hundred and fourteen), and (3) the actual cash value of patents, copyrights, good will, trade-marks, trade brands, franchises, or other intangible property, paid into the trade or business, at the time of such payment, if payment was made therefor specifically as such in cash or tangible property, not to exceed the actual cash or actual cash value of the tangible property bona fide paid therefor at the time of such payment.

In the case of a foreign corporation or partnership or of a non-resident alien individual the term "invested capital" means that proportion of the entire invested capital, as defined and limited in this title, which the net income from sources within the United States bears to the entire net income. [— *Stat. L.* —.]

See the notes to section 200 of this Act, *supra*, p. 341.

SEC. 208. [Reorganization, consolidation or change of ownership of trade or business.] That in case of the reorganization, consolidation or change of ownership of a trade or business after March third, nineteen hundred and seventeen, if an interest or control in such trade or business of fifty per centum or more remains in control of the same persons, corporations, associations, partnerships, or any of them, then in ascertaining the invested capital of the trade or business no asset transferred or received from the prior trade or business shall be allowed a greater value than would have been allowed under this title in computing the invested capital of such prior trade or business if such asset had not been so transferred or received, unless such asset was paid for specifically as such, in cash or tangible property, and then not to exceed the actual cash or actual cash value of the tangible property paid therefor at the time of such payment. [— *Stat. L.* —.]

See the notes to section 200 of this Act, *supra*, p. 341.

SEC. 209. [Trade or business having no invested capital — deductions.] That in the case of a trade or business having no invested capital or not more than a nominal capital there shall be levied, assessed, collected and paid, in addition to the taxes under existing law and under this Act, in lieu of the tax imposed by section two hundred and one, a tax equivalent to eight per centum of the net income of such trade or business in excess of the following deductions: In the case of a domestic corporation \$3,000, and in the case of a domestic partnership or a citizen or resident of the United States \$6,000; in the case of all other trades or business, no deduction. [— *Stat. L.* —.]

See the notes to section 200 of this Act, *supra*, p. 341.

SEC. 210. [Invested capital not determinable — deductions.] That if the Secretary of the Treasury is unable in any case satisfactorily to determine the invested capital, the amount of the deduction shall be the sum of (1) an amount equal to the same proportion of the net income of the trade or business received during the taxable year as the proportion which the average deduction (determined in the same manner as provided in section two hundred and three, without including the \$3,000 or \$6,000 therein referred to) for the same calendar year of representative corporations, partnerships, and individuals, engaged in a like or similar trade or business, bears to the total net income of the trade or business received by such corporations, partnerships, and individuals, plus (2) in the case of a domestic corporation \$3,000, and in the case of a domestic partnership or a citizen or resident of the United States \$6,000.

For the purpose of this section the proportion between the deduction and the net income in each trade or business shall be determined by the Commissioner of Internal Revenue in accordance with regulations prescribed by him, with the approval of the Secretary of the Treasury. In the case of a corporation or partnership which has fixed its own fiscal year, the proportion determined for the calendar year ending during such fiscal year shall be used. [— *Stat. L.* —.]

See the notes to section 200 of this Act, *supra*, p. 341.

SEC. 211. [Partnerships — return.] That every foreign partnership having a net income of \$3,000 or more for the taxable year, and every domestic partnership having a net income of \$6,000 or more for the taxable year, shall render a correct return of the income of the trade or business for the taxable year, setting forth specifically the gross income for such year, and the deductions allowed in this title. Such returns shall be rendered at the same time and in the same manner as is prescribed for income-tax returns under Title I of such Act of September eighth, nineteen hundred and sixteen, as amended by this Act. [— *Stat. L.* —.]

See the notes to section 200 of this Act, *supra*, p. 341.

The Act of Sept. 8, 1916, ch. 463, Title I, mentioned in the text, is given *supra*, p. 312.

SEC. 212. [Administrative laws, etc., applicable to title.] That all administrative, special, and general provisions of law, including the laws in relation to the assessment, remission, collection, and refund of internal-revenue taxes not heretofore specifically repealed, and not inconsistent with the provisions of this title are hereby extended and made applicable to all the provisions of this title and to the tax herein imposed, and all provisions of Title I of such Act of September eighth, nineteen hundred and sixteen, as amended by this Act, relating to returns and payment of the tax therein imposed, including penalties, are hereby made applicable to the tax imposed by this title. [— *Stat. L.* —.]

See the notes to section 200 of this Act, *supra*, p. 341.

The Act of Sept. 8, 1916, ch. 463, Title I, mentioned in the text, is given *supra*, p. 312.

SEC. 213. [Rules and regulations — corporations, etc., to furnish data.] That the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall make all necessary regulations for carrying out the provisions of this title, and may require any corporation, partnership, or individual, subject to the provisions of this title, to furnish him with such facts, data, and information as in his judgment are necessary to collect the tax imposed by this title. [— *Stat. L.* —.]

See the notes to section 200 of this Act, *supra*, p. 341.

SEC. 214. [Former excess profits tax law repealed — munition manufacturer's tax law amended.] That Title II (sections two hundred to two hundred and seven, inclusive) of the Act entitled "An Act to provide increased revenue to defray the expenses of the increased appropriations for the Army and Navy, and the extensions of fortifications, and for other purposes," approved March third, nineteen hundred and seventeen, is hereby repealed.

Any amount heretofore or hereafter paid on account of the tax imposed by such Title II, shall be credited toward the payment of the tax imposed by this title, and if the amount so paid exceeds the amount of such tax the excess shall be refunded as a tax erroneously or illegally collected.

Subdivision (1) of section three hundred and one of such Act of September-eight, nineteen hundred and sixteen, is hereby amended so that the rate of tax for the taxable year nineteen hundred and seventeen shall be ten per centum instead of twelve and one-half per centum, as therein provided. * * * [— *Stat. L.* —.]

See the notes to section 200 of this Act, *supra*, p. 341.

The Act of March 3, 1917, ch. 159, Title II, §§ 200-207, 39 Stat. L. 1000, repealed by this section, is set out in the notes to section 200 of this Act, *supra*, p. 341.

The Act of Sept. 8, 1916, ch. 463, Title III, § 300, amended by this section, is set out *infra*, this page, and a further amendment made by a provision of this section, omitted here, is incorporated therein.

X. MUNITION MANUFACTURES

SEC. 300. [Definitions — "person" — "taxable year" — "United States.")] That when used in this title —

The term "person" includes partnerships, corporations, and associations;

The term "taxable year" means the twelve months ending December thirty-first. The first taxable year shall be the twelve months ending December thirty-first, nineteen hundred and sixteen; and

The term "United States" means only the States, the Territories of Alaska and Hawaii, and the District of Columbia. [39 Stat. L. 780.]

The foregoing section 300, and the following sections 301-312, constitute "Title III — Munition Manufacturer's Tax" of the Act of Sept. 8, 1916, ch. 463, entitled "An Act To increase the revenue and for other purposes." General administrative provisions of this Act, which affect these sections, and should be read in connection therewith, are given in subdivision XV of this title, *infra*, p. 374.

SEC. 301. [Amount of tax — time limit on section.] (1) That every person manufacturing (a) gunpowder and other explosives, excepting blasting powder and dynamite used for industrial purposes; (b) cartridges, loaded and unloaded, caps or primers, exclusive of those used for industrial purposes; (c) projectiles, shells, or torpedoes of any kind, including shrapnel, loaded or unloaded, or fuses, or complete rounds of ammunition; (d) firearms of any kind and appendages, including small arms, cannon, machine guns, rifles, and bayonets; (e) electric motor boats, submarine or submersible vessels or boats; or (f) any part of any of the articles mentioned in (b), (c), (d), or (e); shall pay for each taxable year, in addition to the income tax imposed by Title I, an excise tax of twelve and one-half per centum upon the entire net profits actually received or accrued for said year from the sale or disposition of such articles manufactured within the United States: *Provided, however,* That no person shall pay such tax upon net profits received during the year nineteen hundred and sixteen derived from the sale and delivery of the articles enumerated in this section under contracts executed and fully performed by such person prior to January first, nineteen hundred and sixteen.

(2) This section shall cease to be of effect on and after January first, nineteen hundred and eighteen. [39 Stat. L. 781, as amended by — Stat. L. —.]

See the notes to the preceding section 300 of this Act.

This section was amended by the Act of Oct. 3, 1917, ch. —, Title II, § 214, *supra*, p. 360, by making the rate of tax for the taxable year 1917 ten per centum instead of twelve and one-half per centum, as is herein provided, and by substituting the subdivision "(2)" given in the text for the original subdivision "(2)," which was as follows:

"(2) This section shall cease to be of effect at the end of one year after the termination of the present European war, which shall be evidenced by the proclamation of the President of the United States declaring such war to have ended."

Any corporation, joint-stock company, or association or insurance company, actually paying the tax imposed by this section, is entitled to credit equal to the amount so actually paid as against any special excise tax imposed by the second and third paragraphs of section 407 of Title IV of this Act, *supra*, p. 282, by virtue of a proviso thereof.

SEC. 302. [Computation of net profits.] That in computing net profits under the provisions of this title, for the purpose of the tax there shall be allowed as deductions from the gross amount received or accrued for the taxable year from the sale or disposition of such articles manufactured within the United States, the following items:

- (a) The cost of raw materials entering into the manufacture;
- (b) Running expenses, including rentals, cost of repairs and maintenance, heat, power, insurance, management, salaries, and wages;
- (c) Interest paid within the taxable year on debts or loans contracted to meet the needs of the business, and the proceeds of which have been actually used to meet such needs;
- (d) Taxes of all kinds paid during the taxable year with respect to the business or property relating to the manufacture;
- (e) Losses actually sustained within the taxable year in connection with the business of manufacturing such articles, including losses from fire, flood, storm, or other casualty, and not compensated for by insurance or otherwise; and

(f) A reasonable allowance according to the conditions peculiar to each concern, for amortization of the values of buildings and machinery, account being taken of the exceptional depreciation of special plants. [39 Stat. L. 781.]

See the notes to section 300 of this Act, *supra*, p. 350.

SEC. 303. [Sales at less than fair market price.] If any person manufactures any article specified in section three hundred and one and, during any taxable year or part thereof, whether under any agreement, arrangement, or understanding, or otherwise, sells or disposes of any such article at less than the fair market price obtainable therefor, either (a) in such manner as directly or indirectly to benefit such person or any person directly or indirectly interested in the business of such person, or (b) with intent to cause such benefit, the gross amount received or accrued for such year or part thereof from the sale or disposition of such article shall be taken to be the amount which would have been received or accrued from the sale or disposition of such article if sold at the fair market price. [39 Stat. L. 781.]

See the notes to section 300 of this Act, *supra*, p. 350.

SEC. 304. [Returns to collector.] On or before the first day of March, nineteen hundred and seventeen, and the first day of March in each year thereafter, a true and accurate return under oath shall be made by each person manufacturing articles specified in section three hundred and one to the collector of internal revenue for the district in which such person has his principal office or place of business, in such form as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall prescribe, setting forth specifically the gross amount of income received or accrued from the sale or disposition of the articles specified in section three hundred and one, and from the total thereof deducting the aggregate items of allowance authorized in section three hundred and two, and such other particulars as to the gross receipts and items of allowance as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may require. [39 Stat. L. 781.]

See the notes to section 300 of this Act, *supra*, p. 350.

SEC. 305. [Transmission of returns to commissioner — assessment of tax.] All such returns shall be transmitted forthwith by the collector to the Commissioner of Internal Revenue, who shall, as soon as practicable, assess the tax found due and notify the person making such return of the amount of tax for which such person is liable, and such person shall pay the tax to the collector on or before thirty days from the date of such notice. [39 Stat. L. 782.]

See the notes to section 300 of this Act, *supra*, p. 350.

SEC. 306. [Authority to go behind return — investigation of net profits by Secretary of Treasury or Commissioner.] If the Secretary of the Treasury or the Commissioner of Internal Revenue shall have reason to

be dissatisfied with the return as made, or if no return is made, the commissioner is authorized to make an investigation and to determine the amount of net profits and may assess the proper tax accordingly. He shall notify the person making, or who should have made, such return and shall proceed to collect the tax in the same manner as provided in this title, unless the person so notified shall file a written request for a hearing with the commissioner within thirty days after the date of such notice; and on such hearing the burden of establishing to the satisfaction of the commissioner that the gross amount received or accrued or the amount of net profits, as determined by the commissioner, is incorrect, shall devolve upon such person. [39 Stat. L. 782.]

See the notes to section 300 of this Act, *supra*, p. 350.

SEC. 307. [Assessment of tax against whom.] The tax may be assessed on any person for the time being owning or carrying on the business, or on any person acting as agent for that person in carrying on the business, or where a business has ceased, on the person who owned or carried on the business, or acted as agent in carrying on the business immediately before the time at which the business ceased. [39 Stat. L. 782.]

See the notes to section 300 of this Act, *supra*, p. 350.

SEC. 308. [Examination of books, etc.] For the purpose of carrying out the provisions of this title the Commissioner of Internal Revenue is authorized, personally or by his agent, to examine the books, accounts, and records of any person subject to this tax. [39 Stat. L. 782.]

See the notes to section 300 of this Act, *supra*, p. 350.

SEC. 309. [Communication of information obtained under provisions of title.] No person employed by the United States shall communicate, or allow to be communicated to any person not legally entitled thereto, any information obtained under the provisions of this title, or allow any such person to inspect or have access to any return furnished under the provisions of this title. [39 Stat. L. 782.]

See the notes to section 300 of this Act, *supra*, p. 350.

SEC. 310. [Violation of provisions of title — penalty.] Whoever violates any of the provisions of this title or the regulations made thereunder, or who knowingly makes false statements in any return, or refuses to give such information as may be called for, is guilty of a misdemeanor, and upon conviction shall, in addition to paying any tax to which he is liable, be fined not more than \$10,000, or imprisoned not exceeding one year, or both, in the discretion of the court. [39 Stat. L. 782.]

See the notes to section 300 of this Act, *supra*, p. 350.

SEC. 311. [Existing laws applicable to title.] All administrative, special, and general provisions of law, relating to the assessment and collection of taxes not specifically repealed, are hereby made to apply to this

title so far as applicable and not inconsistent with its provisions. [39 Stat. L. 782.]

See the notes to section 300 of this Act, *supra*, p. 350.

SEC. 312. [Regulations — additional information required.] The Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall make all necessary regulations for carrying out the provisions of this title, and may require any person subject to such provisions to furnish him with further information whenever in his judgment the same is necessary to collect the tax provided for herein. [39 Stat. L. 782.]

See the notes to section 300 of this Act, *supra*, p. 350.

XI. ADMISSIONS AND DUES

SEC. 700. [Tax on admissions — by whom paid — “admissions” construed.] That from and after the first day of November, nineteen hundred and seventeen, there shall be levied, assessed, collected, and paid (a) a tax of 1 cent for each ten cents or fraction thereof of the amount paid for admission to any place, including admission by season ticket or subscription, to be paid by the person paying for such admission: *Provided*, That the tax on admission of children under twelve years of age where an admission charge for such children is made shall in every case be 1 cent; and (b) in the case of persons (except bona fide employees, municipal officers on official business, and children under twelve years of age) admitted free to any place at a time when and under circumstances under which an admission charge is made to other persons of the same class, a tax of 1 cent for each 10 cents or fraction thereof of the price so charged to such other persons for the same or similar accommodations, to be paid by the person so admitted; and (c) a tax of 1 cent for each 10 cents or fraction thereof paid for admission to any public performance for profit at any cabaret or other similar entertainment to which the charge for admission is wholly or in part included in the price paid for refreshment, service, or merchandise; the amount paid for such admission to be computed under rules prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, such tax to be paid by the person paying for such refreshment, service, or merchandise. In the case of persons having the permanent use of boxes or seats in an opera house or any place of amusement or a lease for the use of such box or seat in such opera house or place of amusement there shall be levied, assessed, collected, and paid a tax equivalent to ten per centum of the amount for which a similar box or seat is sold for performance or exhibition at which the box or seat is used or reserved by or for the lessee or holder. These taxes shall not be imposed in the case of a place the maximum charge for admission to which is 5 cents, or in the case of shows, rides, and other amusements, (the maximum charge for admission to which is 10 cents) within outdoor general amusement parks, or in the case of admission to such parks.

No tax shall be levied under this title in respect to any admissions all the proceeds of which inure exclusively to the benefit of religious, educational or charitable institutions, societies, or organizations, or admissions

to agricultural fairs none of the profits of which are distributed to stockholders or members of the association conducting the same.

The term "admission" as used in this title includes seats and tables, reserved or otherwise, and other similar accommodations, and the charges made therefor. [— *Stat. L.* —.]

The foregoing section 700 and the following sections 701, 702 constitute "Title VII.— War Tax on Admissions and Dues" of an Act of Oct. 3, 1917, ch. —, entitled "An Act To provide revenue to defray war expenses, and for other purposes." General administrative provisions of this Act, which affect these sections and should be read in connection therewith, are given under subdivision XV of this title, *infra*, p. 374.

SEC. 701. [Club dues.] That from and after the first day of November, nineteen hundred and seventeen, there shall be levied, assessed, collected, and paid, a tax equivalent to ten per centum of any amount paid as dues or membership fees (including initiation fees), to any social, athletic, or sporting club or organization, where such dues or fees are in excess of \$12 per year; such taxes to be paid by the person paying such dues or fees: *Provided*, That there shall be exempted from the provisions of this section all amounts paid as dues or fees to a fraternal beneficiary society, order, or association, operating under the lodge system or for the exclusive benefit of the members of a fraternity itself operating under the lodge system, and providing for the payment of life, sick, accident, or other benefits to the members of such society, order, or association or their dependents. [— *Stat. L.* —.]

See the notes to the preceding section 700 of this Act.

SEC. 702. [Tax — by whom collected — returns.] That every person, corporation, partnership, or association (a) receiving any payments for such admission, dues, or fees, shall collect the amount of the tax imposed by section seven hundred or seven hundred and one from the person making such payments, or (b) admitting any person free to any place for admission to which a charge is made shall collect the amount of the tax imposed by section seven hundred from the person so admitted, and (c) in either case shall make returns and payments of the amount so collected, at the same time and in same manner as provided in section five hundred and three of this Act. [— *Stat. L.* —.]

See the notes to section 700 of this Act, *supra*, p. 354.

XII. FACILITIES FURNISHED BY PUBLIC UTILITIES AND INSURANCE

SEC. 500. [Transportation of person and property — messages and telephone conversations.] That from and after the first day of November, nineteen hundred and seventeen, there shall be levied, assessed, collected, and paid (a) a tax equivalent to three per centum of the amount paid for the transportation by rail or water or by any form of mechanical motor power when in competition with carriers by rail or water of property by freight consigned from one point in the United States to another; (b) a

tax of 1 cent for each 20 cents, or fraction thereof, paid to any person, corporation, partnership, or association, engaged in the business of transporting parcels or packages by express over regular routes between fixed terminals, for the transportation of any package, parcel or shipment by express from one point in the United States to another: *Provided*, That nothing herein contained shall be construed to require the carrier collecting such tax to list separately in any bill of lading, freight receipt, or other similar document, the amount of the tax herein levied, if the total amount of the freight and tax be therein stated; (c) a tax equivalent to eight per centum of the amount paid for the transportation of persons by rail or water, or by any form of mechanical motor power on a regular established line when in competition with carriers by rail or water, from one point in the United States to another or to any point in Canada or Mexico, where the ticket therefor is sold or issued in the United States, not including the amount paid for commutation or season tickets for trips less than thirty miles, or for transportation the fare for which does not exceed 35 cents, and a tax equivalent to ten per centum of the amount paid for seats, berths, and staterooms in parlor cars, sleeping cars, or on vessels. If a mileage book used for such transportation or accommodation has been purchased before this section takes effect, or if cash fare be paid, the tax imposed by this section shall be collected from the person presenting the mileage book, or paying the cash fare, by the conductor or other agent, when presented for such transportation or accommodation, and the amount so collected shall be paid to the United States in such manner and at such times as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may prescribe; if a ticket (other than a mileage book) is bought and partially used before this section goes into effect it shall not be taxed, but if bought but not so used before this section takes effect, it shall not be valid for passage until the tax has been paid and such payment evidenced on the ticket in such manner as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may by regulation prescribe; (d) a tax equivalent to five per centum of the amount paid for the transportation of oil by pipe line; (e) a tax of 5 cents upon each telegraph, telephone, or radio, dispatch, message, or conversation, which originates within the United States, and for the transmission of which a charge of 15 cents or more is imposed: *Provided*, That only one payment of such tax shall be required, notwithstanding the lines or stations of one or more persons, corporations, partnerships, or associations shall be used for the transmission of such dispatch, message, or conversation. [— *Stat. L.* —.]

The foregoing section 500 and the following sections 501-505 constitute "Title V.—War Tax on Facilities Furnished by Public Utilities, and Insurance" of the Act of Oct. 3, 1917, ch. —, entitled "An Act To provide revenue to defray war expenses, and for other purposes." Additional administrative provisions of this Act, which affect these sections and should be read in connection therewith, are given in subdivision XV of this title, *infra*, p. 374.

Sec. 501. [Tax by whom paid — exemptions.] That the taxes imposed by section five hundred shall be paid by the person, corporation, partnership, or association paying for the services or facilities rendered.

In case such carrier does not, because of its ownership of the commodity transported, or for any other reason, receive the amount which as a carrier it would otherwise charge, such carrier shall pay a tax equivalent to the tax which would be imposed upon the transportation of such commodity if the carrier received payment for such transportation: *Provided*, That in case of a carrier which on May first, nineteen hundred and seventeen, had no rates or tariffs on file with the proper Federal or State authority, the tax shall be computed on the basis of the rates or tariffs of other carriers for like services as ascertained and determined by the Commissioner of Internal Revenue: *Provided further*, That nothing in this or the preceding section shall be construed as imposing a tax (a) upon the transportation of any commodity which is necessary for the use of the carrier in the conduct of its business as such and is intended to be so used or has been so used; or (b) upon the transportation of company material transported by one carrier, which constitutes a part of a railroad system, for another carrier which is also a part of the same system. [— *Stat. L.* —.]

See the notes to the preceding section 500 of this Act.

SEC. 502. [Exemptions — payment for services rendered government.] That no tax shall be imposed under section five hundred upon any payment received for services rendered to the United States, or any State, Territory, or the District of Columbia. The right to exemption under this section shall be evidenced in such manner as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may by regulation prescribe. [— *Stat. L.* —.]

See the notes to section 500 of this Act, *supra*, p. 355.

SEC. 503. [Returns.] That each person, corporation, partnership, or association receiving any payments referred to in section five hundred shall collect the amount of the tax, if any, imposed by such section from the person, corporation, partnership, or association making such payments, and shall make monthly returns under oath, in duplicate, and pay the taxes so collected and the taxes imposed upon it under paragraph two of section five hundred and one to the collector of internal revenue of the district in which the principal office or place of business is located. Such returns shall contain such information, and be made in such manner, as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may by regulation prescribe. [— *Stat. L.* —.]

See the notes to section 500 of this Act, *supra*, p. 355.

SEC. 504. [Insurance policies.] That from and after the first day of November, nineteen hundred and seventeen, there shall be levied, assessed, collected, and paid the following taxes on the issuance of insurance policies:

(a) Life insurance: A tax equivalent to 8 cents on each \$100 or fractional part thereof of the amount for which any life is insured under any policy

of insurance, or other instrument, by whatever name the same is called: *Provided*, That on all policies for life insurance only by which a life is insured not in excess of \$500, issued on the industrial or weekly-payment plan of insurance, the tax shall be forty percentum of the amount of the first weekly premium. *Provided further*, That policies of reinsurance shall be exempt from the tax imposed by this subdivision;

(b) Marine, inland, and fire insurance: A tax equivalent to 1 cent on each dollar or fractional part thereof of the premium charged under each policy of insurance or other instrument by whatever name the same is called whereby insurance is made or renewed upon property of any description (including rents or profits), whether against peril by sea or inland waters, or by fire or lightning, or other peril: *Provided*, That policies of reinsurance shall be exempt from the tax imposed by this subdivision;

(c) Casualty insurance: A tax equivalent to 1 cent on each dollar or fractional part thereof of the premium charged under each policy of insurance or obligation of the nature of indemnity for loss, damage, or liability (except bonds taxable under subdivision two of schedule A of Title VIII) issued or executed or renewed by any person, corporation, partnership, or association, transacting the business of employer's liability, workmen's compensation, accident, health, tornado, plate glass, steam boiler, elevator, burglary, automatic sprinkler, automobile, or other branch of insurance (except life insurance, and insurance described and taxed in the preceding subdivision): *Provided*, That policies of reinsurance shall be exempt from the tax imposed by this subdivision;

(d) Policies issued by any person, corporation, partnership, or association, whose income is exempt from taxation under Title I of the Act entitled "An Act to increase the revenue, and for other purposes," approved September eighth, nineteen hundred and sixteen, shall be exempt from the taxes imposed by this section. [— *Stat. L.* —.]

See the notes to section 500 of this Act, *supra*, p. 355.

Subdivision 2 of Schedule A of Title VIII, mentioned in subdivision (c) of this section is given *infra*, p. 371.

The Act of Sept. 8, 1916, ch. 463, Title I, mentioned in paragraph (d) of this section, is given *supra*, p. 312.

SEC. 505. [Returns by insurance companies.] That every person, corporation, partnership, or association, issuing policies of insurance upon the issuance of which a tax is imposed by section five hundred and four, shall, within the first fifteen days of each month, make a return under oath, in duplicate, and pay such tax to the collector of internal revenue of the district in which the principal office or place of business of such person, corporation, partnership, or association is located. Such returns shall contain such information and be made in such manner as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may by regulation prescribe. [— *Stat. L.* —.]

See the notes to section 500 of this Act, *supra*, p. 355.

XIII. COTTON FUTURES

[Sec. 1.] [United States Cotton Futures Act.] That this Act shall be known by the short title of the "United States cotton futures Act." [39 Stat. L. 476.]

The foregoing section I and the following sections 2-22 constitute "Part A" of the Agricultural Appropriation Act of Aug. 11, 1916, ch. 313. Preceding this first section was the following paragraph:

"That this Part, to be known as the United States Cotton Futures Act, be, and hereby is, enacted to read and be effective hereafter as follows:" etc.

Section 21 of this Act, *infra*, p. 367, repeals the former Cotton Futures Act of Aug. 18, 1914, ch. 255, given in 1916 Supp. Fed. Stat. Ann. 73, 4 Fed. Stat. Ann. (2d ed.) 277.

The former Cotton Futures Act of Aug. 18, 1914, ch. 255, repealed by this Act, having originated in the United States Senate contrary to the constitutional requirement that bills for raising revenue must originate in the House of Representatives, is not and never was a law of the United States. *Hubbard v. Lowe*, (S. D. N. Y. 1915) 226 Fed. 135, wherein it was held as a matter of law that the court must accept the statement of the records in the office of the Secretary of State that the Cotton Futures Act originated in the Senate. Reverting to this definite finding of law, the court said: "When the Congress, through its proper officials, certifies that it has gone through the forms of lawmaking in violation of an express constitutional mandate, is the result a law at all? Of course it is not; the question answers itself, unless there be some different treatment due to an act created in a fundamentally illegal manner and that accorded to one created for an unconstitutional purpose. There can be no such difference logically. Any and all violations of constitutional requirements vitiate a statute, and it has been so held in three states. *Succession of Givanovich*, 50 La. Ann., Pt. I, 625, 24 South. 679; *Succession of Sala*, 50 La. Ann., Pt. II, 1018, 24 South. 674; *Perry Co. v. Selma*, etc., R. R., 58 Ala. 546; *Thierman Co. v. Commonwealth*, 123 Ky. 740, 97 S. W. 366. It has not heretofore been found necessary to condemn an act of Congress for this kind of careless journey work, though it has sometimes required a good deal of mental strain to demonstrate that some piece of legislation originating in a Senate was a 'bill for raising revenue.' *Twin City Bank v. Nebeker*, 167 U. S. 196, 17 Sup. Ct. 766, 42 L. ed. 134; *United States v. James*, 13 Blatchf. 207, Fed. Cas. No. 15,464; *Dundee*, etc. *v. Parrish* (C. C.) 24 Fed. 197; *Geer v. Board of Commissioners*, 97 Fed. 435, 38 C. C. A. 250. If these courts had not assumed that a revenue bill of Senate origin was a nullity, why spend so much time in proving that the act under consideration was not such a bill? Defendant has urged upon the court that in *Rainey v. United States*, 232 U. S. at page 317, 34 Sup. Ct. at page 431, 58 L. ed. 617, the Supreme Court declined to state that there was 'judicial power after an act of Congress has been duly promulgated to inquire in which house it originated for the purpose of determining its validity.' There was nothing in the *Rainey* case requiring decision on the point here raised which is not (under the reasoning in *Field v. Clark*, *supra*), an inquiry as to the house of origin of the Cotton Futures Act. No inquiry is necessary. The certificate of Congress, the enrolled Act and Statutes at Large all proclaim the house in which Congress thought this bill originated, wherefore the sole question here is as to the effect of such a proclamation of unconstitutional action. To this situation the remark in the *Rainey* case has no application. It is not seen how the court can disregard the information furnished by the Congress itself. The Cotton Futures Act is not, and never was, a law of the United States. It is one of those legislative projects which, to be a law, must originate in the lower house."

Sec. 2. [Definition and construction.] That, for the purposes of this Act, the term "contract of sale" shall be held to include sales, agreements of sale, and agreements to sell. That the word "person," wherever used in this Act, shall be construed to import the plural or singular, as the case demands, and shall include individuals, associations, partnerships, and corporations. When construing and enforcing the provisions of this Act, the act, omission, or failure of any official, agent, or other person acting for or employed by any association, partnership, or corporation within the scope of his employment or office, shall, in every case, also be deemed

the act, omission, or failure of such association, partnership, or corporation as well as that of the person. [39 Stat. L. 476.]

See the notes to the preceding section 1 of this Act.

SEC. 3. [Tax on contracts for future delivery.] That upon each contract of sale of any cotton for future delivery made at, on, or in any exchange, board of trade, or similar institution or place of business, there is hereby levied a tax in the nature of an excise of 2 cents for each pound of the cotton involved in any such contract. [39 Stat. L. 476.]

See the notes to section 1 of this Act, *supra*, p. 359.

SEC. 4. [Contracts of sale — form and contents.] That each contract of sale of cotton for future delivery mentioned in section three of this Act shall be in writing plainly stating, or evidenced by written memorandum showing, the terms of such contract, including the quantity of the cotton involved and the names and addresses of the seller and buyer in such contract, and shall be signed by the party to be charged, or by his agent in his behalf. If the contract or memorandum specify in bales the quantity of the cotton involved, without giving the weight, each bale shall, for the purposes of this Act, be deemed to weigh five hundred pounds. [39 Stat. L. 476.]

See the notes to section 1 of this Act, *supra*, p. 359.

SEC. 5. [Contracts when exempt from tax.] That no tax shall be levied under this Act on any contract of sale mentioned in section three hereof if the contract comply with each of the following conditions:

First. Conform to the requirements of section four of, and the rules and regulations made pursuant to, this Act.

Second. Specify the basis grade for the cotton involved in the contract, which shall be one of the grades for which standards are established by the Secretary of Agriculture, except grades prohibited from being delivered on a contract made under this section by the fifth subdivision of this section, the price per pound at which the cotton of such basis grade is contracted to be bought or sold, the date when the purchase or sale was made, and the month or months in which the contract is to be fulfilled or settled: *Provided*, That middling shall be deemed the basis grade incorporated into the contract if no other basis grade be specified either in the contract or in the memorandum evidencing the same.

Third. Provide that the cotton dealt with therein or delivered thereunder shall be of or within the grades for which standards are established by the Secretary of Agriculture except grades prohibited from being delivered on a contract made under this section by the fifth subdivision of this section and no other grade or grades.

Fourth. Provide that in case cotton of grade other than the basis grade be tendered or delivered in settlement of such contract, the differences above or below the contract price which the receiver shall pay for such grades other than the basis grade shall be the actual commercial differences, determined as hereinafter provided.

Fifth. Provide that cotton that, because of the presence of extraneous matter of any character or irregularities or defects, is reduced in value below that of Good Ordinary, or cotton that is below the grade of Good Ordinary, or, if tinged, cotton that is below the grade of Low Middling, or, if stained, cotton that is below the grade of Middling, the grades mentioned being of the official cotton standards of the United States, or cotton that is less than seven-eighths of an inch in length of staple, or cotton of perished staple or of immature staple, or cotton that is "gin cut" or reginned, or cotton that is "repacked" or "false packed" or "mixed packed" or "water packed," shall not be delivered on, under, or in settlement of such contract.

Sixth. Provide that all tenders of cotton under such contract shall be the full number of bales involved therein, except that such variations of the number of bales may be permitted as is necessary to bring the total weight of the cotton tendered within the provisions of the contract as to weight; that, on the fifth business day prior to delivery, the person making the tender shall give to the person receiving the same written notice of the date of delivery, and that, on or prior to the date so fixed for delivery, and in advance of final settlement of the contract, the person making the tender shall furnish to the person receiving the same a written notice or certificate stating the grade of each individual bale to be delivered and, by means of marks or numbers, identifying each bale with its grade.

Seventh. Provide that, in case a dispute arises between the person making the tender and the person receiving the same, as to the classification of any cotton tendered under the contract, either party may refer the question of the true classification of said cotton to the Secretary of Agriculture for determination, and that such dispute shall be referred and determined, and the costs thereof fixed, assessed, collected, and paid in such manner and in accordance with such rules and regulations as may be prescribed by the Secretary of Agriculture.

The provisions of the third, fourth, fifth, sixth, and seventh subdivisions of this section shall be deemed fully incorporated into any such contract if there be written or printed thereon, or on the memorandum evidencing the same, at or prior to the time the same is signed, the phrase "Subject to United States cotton futures Act, section five."

The Secretary of Agriculture is authorized to prescribe rules and regulations for carrying out the purposes of the seventh subdivision of this section, and his findings, upon any dispute referred to him under said seventh subdivision, made after the parties in interest have had an opportunity to be heard by him or such officer, officers, agent, or agents of the Department of Agriculture as he may designate, shall be accepted in the courts of the United States in all suits between such parties, or their privies, as prima facie evidence of the true classification of the cotton involved. [39 Stat. L. 476.]

See the notes to section 1 of this Act, *supra*, p. 359.

SEC. 6. [Determining cotton values.] That for the purposes of section five of this Act the differences above or below the contract price which the receiver shall pay for cotton of grades above or below the basis grade in the settlement of a contract of sale for the future delivery of cotton shall

be determined by the actual commercial differences in value thereof upon the sixth business day prior to the day fixed, in accordance with the sixth subdivision of section five, for the delivery of cotton on the contract, established by the sale of spot cotton in the market where the future transaction involved occurs and is consummated if such market be a bona fide spot market; and in the event there be no bona fide spot market at or in the place in which such future transaction occurs, then, and in that case, the said differences above or below the contract price which the receiver shall pay for cotton above or below the basis grade shall be determined by the average actual commercial differences in value thereof, upon the sixth business day prior to the day fixed, in accordance with the sixth subdivision of section five, for the delivery of cotton on the contract, in the spot markets of not less than five places designated for the purpose from time to time by the Secretary of Agriculture, as such values were established by the sales of spot cotton, in such designated five or more markets: *Provided*, That for the purposes of this section such values in the said spot markets be based upon the standards for grades of cotton established by the Secretary of Agriculture: *And provided further*, That whenever the value of one grade is to be determined from the sale or sales of spot cotton of another grade or grades, such value shall be fixed in accordance with rules and regulations which shall be prescribed for the purpose by the Secretary of Agriculture. [39 Stat. L. 478.]

See the notes to section 1 of this Act, *supra*, p. 359.

SEC. 6A. [Contracts when exempt from tax.] That no tax shall be levied under this Act on any contract of sale mentioned in section three hereof if the contract provide that, in case cotton of grade or grades other than the basis grade specified in the contract shall be tendered in performance of the contract, the parties to such contract may agree, at the time of the tender, as to the price of the grade or grades so tendered, and that if they shall not then agree as to such price, then, and in that event, the buyer of said contract shall have the right to demand the specific fulfillment of such contract by the actual delivery of cotton of the basis grade named therein and at the price specified for such basis grade in said contract, and if the contract also comply with all the terms and conditions of section five hereof not inconsistent with this section: *Provided*, That nothing in this section shall be so construed as to relieve from the tax levied by section three of this Act any contract in which, or in the settlement of or in respect to which, any device or arrangement whatever is resorted to, or any agreement is made, for the determination or adjustment of the price of the grade or grades tendered other than the basis grade specified in the contract by any "fixed difference" system, or by arbitration, or by any other method not provided for by this Act.

Contracts made in compliance with this section shall be known as "Section six A Contracts." The provisions of this section shall be deemed fully incorporated into any such contract if there be written or printed thereon, or on the memorandum evidencing the same, at or prior to the time the same is signed, the phrase "Subject to United States cotton futures Act, section six A."

Section ten of this Act shall not be construed to apply to any contract of sale made in compliance with section six A hereof. [39 Stat. L. 478.]

See the notes to section 1 of this Act, *supra*, p. 359.

SEC. 7. [Bona fide spot markets — designation.] That for the purposes of this Act the only markets which shall be considered bona fide spot markets shall be those which the Secretary of Agriculture shall, from time to time, after investigation, determine and designate to be such, and of which he shall give public notice. [39 Stat. L. 478.]

See the notes to section 1 of this Act, *supra*, p. 359.

SEC. 8. [Insufficient spot markets.] That in determining, pursuant to the provisions of this Act, what markets are bona fide spot markets, the Secretary of Agriculture is directed to consider only markets in which spot cotton is sold in such volume and under such conditions as customarily to reflect accurately the value of middling cotton and the differences between the prices or values of middling cotton and of other grades of cotton for which standards shall have been established by the Secretary of Agriculture: *Provided*, That if there be not sufficient places, in the markets of which are made bona fide sales of spot cotton of grades for which standards are established by the Secretary of Agriculture, to enable him to designate at least five spot markets in accordance with section six of this Act, he shall, from data as to spot sales collected by him, make rules and regulations for determining the actual commercial differences in the value of spot cotton of the grades established by him as reflected by bona fide sales of spot cotton, of the same or different grades, in the markets selected and designated by him, from time to time, for that purpose, and in that event, differences in value of cotton of various grades involved in contracts made pursuant to section five of this Act shall be determined in compliance with such rules and regulations. [39 Stat. L. 479.]

See the notes to section 1 of this Act, *supra*, p. 359.

SEC. 9. [Standards of cotton established — changes of standards — preparation of forms.] That the Secretary of Agriculture is authorized, from time to time, to establish and promulgate standards of cotton by which its quality or value may be judged or determined, including its grade, length of staple, strength of staple, color, and such other qualities, properties, and conditions as may be standardized in practical form, which, for the purposes of this Act, shall be known as the "Official cotton standards of the United States," and to adopt, change, or replace, the standard for any grade of cotton established under the Act making appropriations for the Department of Agriculture for the fiscal year ending June thirtieth, nineteen hundred and nine (Thirty-fifth Statutes at Large, page two hundred and fifty-one), and Acts supplementary thereto: *Provided*, That any standard of any cotton established and promulgated under this Act by the Secretary of Agriculture shall not be changed or replaced within a period less than one year from and after the date of promulgation thereof by the Secretary of Agriculture: *Provided further*, That, subsequent to six months after the date section three of this Act becomes effective, no change

or replacement of any standard of any cotton established and promulgated under this Act by the Secretary of Agriculture shall become effective until after one year's public notice thereof, which notice shall specify the date when the same is to become effective. The Secretary of Agriculture is authorized and directed to prepare practical forms of the official cotton standards which shall be established by him, and to furnish such practical forms from time to time, upon request, to any person, the cost thereof, as determined by the Secretary of Agriculture, to be paid by the person requesting the same, and to certify such practical forms under the seal of the Department of Agriculture and under the signature of the said Secretary, thereto affixed by himself or by some official or employee of the Department of Agriculture thereunto duly authorized by the said Secretary. [39 Stat. L. 479.]

See the notes to section 1 of this Act, *supra*, p. 359.

For the provisions of the Agricultural Appropriation Act of May 23, 1908, ch. 192, § 1, mentioned in this section, see 1909 Supp. Fed. Stat. Ann. 6; 1 Fed. Stat. Ann. (2d ed.) 239.

SEC. 10. [Contracts when exempt from tax — conforming to rules, etc.] That no tax shall be levied under this Act on any contract of sale mentioned in section three hereof, if the contract comply with each of the following conditions:

First. Conform to the rules and regulations made pursuant to this Act.

Second. Specify the grade, type, sample, or description of the cotton involved in the contract, the price per pound at which such cotton is contracted to be bought or sold, the date of the purchase or sale, and the time when shipment or delivery of such cotton is to be made.

Third. Provide that cotton of or within the grade or of the type, or according to the sample or description, specified in the contract shall be delivered thereunder, and that no cotton which does not conform to the type, sample, or description, or which is not of or within the grade specified in the contract shall be tendered or delivered thereunder.

Fourth. Provide that the delivery of cotton under the contract shall not be effected by means of "set-off" or "ring" settlement, but only by the actual transfer of the specified cotton mentioned in the contract.

The provisions of the first, third, and fourth subdivisions of this section shall be deemed fully incorporated into any such contract if there be written or printed thereon, or on the document or memorandum evidencing the same, at or prior to the time the same is entered into, the words "Subject to United States cotton futures Act, section ten."

This Act shall not be construed to impose a tax on any sale of spot cotton.

This section shall not be construed to apply to any contract of sale made in compliance with section five of this Act. [39 Stat. L. 479.]

See the notes to section 1 of this Act, *supra*, p. 359.

This section was not to be construed to apply to any contract of sale made in compliance with section 6A of this Act, *supra*, p. 362, by virtue of the last paragraph thereof.

SEC. 11. [Payment of tax — stamps.] That the tax imposed by section three of this Act shall be paid by the seller of the cotton involved in

the contract of sale, by means of stamps which shall be affixed to such contracts, or to the memoranda evidencing the same, and canceled in compliance with rules and regulations which shall be prescribed by the Secretary of the Treasury. [39 Stat. L. 480.]

See the notes to section 1 of this Act, *supra*, p. 359.

SEC. 12. [Unenforceable contracts.] That no contract of sale of cotton for future delivery mentioned in section three of this Act which does not conform to the requirements of section four hereof and has not the necessary stamps affixed thereto as required by section eleven hereof shall be enforceable in any court of the United States by, or on behalf of, any party to such contract or his privies. [39 Stat. L. 480.]

See the notes to section 1 of this Act, *supra*, p. 359.

SEC. 13. [Enforcement of Act — rules and regulations — agents.] That the Secretary of the Treasury is authorized to make and promulgate such rules and regulations as he may deem necessary to collect the tax imposed by this Act and otherwise to enforce its provisions. Further to effect this purpose, he shall require all persons coming within its provisions to keep such records and statements of account, and may require such persons to make such returns verified under oath or otherwise, as will fully and correctly disclose all transactions mentioned in section three of this Act, including the making, execution, settlement, and fulfillment thereof; he may require all persons who act in the capacity of a clearing house, clearing association, or similar institution for the purpose of clearing, settling, or adjusting transactions mentioned in section three of this Act to keep such records and to make such returns as will fully and correctly disclose all facts in their possession relating to such transactions; and he may appoint agents to conduct the inspection necessary to collect said tax and otherwise to enforce this Act and all rules and regulations made by him in pursuance hereof, and may fix the compensation of such agents. The provisions of the internal-revenue laws of the United States, so far as applicable, including sections thirty-one hundred and seventy-three, thirty-one hundred and seventy-four, and thirty-one hundred and seventy-five of the Revised Statutes, as amended, are hereby extended, and made to apply, to this Act. [39 Stat. L. 480.]

See the notes to section 1 of this Act, *supra*, p. 359.

For R. S. secs. 3173, 3174 and 3175, mentioned in this section, see 3 Fed. Stat. Ann. 377-379; 3 Fed. Stat. Ann. (2d ed.) 1002-1005.

SEC. 14. [Penalties for violation of Act.] That any person liable to the payment of any tax imposed by this Act who fails to pay, or evades or attempts to evade the payment of such tax, and any person who otherwise violates any provision of this Act, or any rule or regulation made in pursuance hereof, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than \$100 nor more than \$20,000, in the discretion of the court; and, in case of natural persons, may, in addition, be punished by imprisonment for not less than sixty days nor more than three years, in the discretion of the court. [39 Stat. L. 480.]

See the notes to section 1 of this Act, *supra*, p. 359.

SEC. 15. [Informers rewarded—prosecution by United States attorneys when.] That in addition to the foregoing punishment there is hereby imposed, on account of each violation of this Act, a penalty of \$2,000, to be recovered in an action founded on this Act in the name of the United States as plaintiff, and when so recovered one-half of said amount shall be paid over to the person giving the information upon which such recovery was based. It shall be the duty of United States attorneys, to whom satisfactory evidence of violations of this Act is furnished, to institute and prosecute actions for the recovery of the penalties prescribed by this section. [39 Stat. L. 481.]

See the notes to section 1 of this Act, *supra*, p. 359.

SEC. 16. [Witnesses—immunity from prosecution.] That no person whose evidence is deemed material by the officer prosecuting on behalf of the United States in any case brought under any provision of this Act shall withhold his testimony because of complicity by him in any violation of this Act or of any regulation made pursuant to this Act, but any such person called by such officer who testifies in such case shall be exempt from prosecution for any offense to which his testimony relates. [39 Stat. L. 481.]

See the notes to section 1 of this Act, *supra*, p. 359.

SEC. 17. [Exemption from penalty of person paying tax—right of states, etc., to tax.] That the payment of any tax levied by this Act shall not exempt any person from any penalty or punishment now or hereafter provided by the laws of any State for entering into contracts of sale of cotton for future delivery, nor shall the payment of any tax imposed by this Act be held to prohibit any State or municipality from imposing a tax on the same transaction. [39 Stat. L. 481.]

See the notes to section 1 of this Act, *supra*, p. 359.

SEC. 18. [Appropriation for enforcing Act.] That there is hereby appropriated, out of any moneys in the Treasury not otherwise appropriated, for the fiscal year ending June thirtieth, nineteen hundred and sixteen, the unexpended balance of the sum appropriated by the Act of March fourth, nineteen hundred and fifteen (Thirty-eighth Statutes at Large, page one thousand and seventeen), for "collecting the cotton futures tax," or so much thereof as may be necessary, to enable the Secretary of the Treasury to carry out the provisions of this Act and any duties remaining to be performed by him under the United States cotton futures Act of August eighteenth, nineteen hundred and fourteen (Thirty-eighth Statutes at Large, page six hundred and ninety-three). [39 Stat. L. 481.]

See the notes to section 1 of this Act, *supra*, p. 359.

The Act making an appropriation for "collecting the cotton futures tax" mentioned in this section is the Legislative, Executive, and Judicial Appropriation Act of March 4, 1915, ch. 141, § 1, 38 Stat. L. 1017.

For the Act of Aug. 18, 1914, ch. 255, mentioned in this section, see 1916 Supp. Fed. Stat. Ann. 73; 4 Fed. Stat. Ann. (2d ed.) 277. See also the notes to section 1 of this Act, *supra*, p. 359.

SEC. 19. [Appropriation for making investigations, etc.—reports—disposition of receipts.] That there are hereby appropriated out of any

moneys in the Treasury not otherwise appropriated, available until expended, the unexpended balance of the sum of \$150,000 appropriated by section twenty of the said Act of August eighteenth, nineteen hundred and fourteen, and for the fiscal year ending June thirtieth, nineteen hundred and sixteen, the unexpended balance of the sum of \$75,000 appropriated for the "Enforcement of the United States cotton futures Act" by the Act making appropriations for the Department of Agriculture for the fiscal year ending June thirtieth, nineteen hundred and sixteen (Thirty-eighth Statutes at Large, page one thousand and eighty-six), or so much of each of said unexpended balances as may be necessary, to be used by the Secretary of Agriculture for the same purposes, in carrying out the provisions of this Act, as those for which said sums, respectively, were originally appropriated, and to enable the Secretary of Agriculture to carry out any duties remaining to be performed by him under the said Act of August eighteenth, nineteen hundred and fourteen. The Secretary of Agriculture is hereby directed to publish from time to time the results of investigations made in pursuance of this Act. All sums collected by the Secretary of Agriculture as costs under section five, or for furnishing practical forms under section nine, of this Act, shall be deposited and covered into the Treasury as miscellaneous receipts. [39 Stat. L. 481.]

See the notes to section 1 of this Act, *supra*, p. 359.

For a reference to the Act of Aug. 18, 1914, ch. 255, mentioned in this section, see the notes to the preceding section 18 of this Act.

SEC. 20. [Time of taking effect.] That sections nine, eighteen, and nineteen of this Act and all provisions of this Act authorizing rules and regulations to be prescribed shall be effective immediately. All other sections of this Act shall become and be effective on and after the first day of the calendar month next succeeding the date of the passage of this Act: *Provided*, That nothing in this Act shall be construed to apply to any contract of sale of any cotton for future delivery mentioned in section three of this Act which shall have been made prior to the first day of the calendar month next succeeding the date of the passage of this Act. [39 Stat. L. 481.]

See the notes to section 1 of this Act, *supra*, p. 359.

SEC. 21. [Repeal of prior Act.] That the Act entitled "An Act to tax the privilege of dealing on exchanges, boards of trade, and similar places in contracts of sale of cotton for future delivery, and for other purposes," approved August eighteenth, nineteen hundred and fourteen (Thirty-eighth Statutes at Large, page six hundred and ninety-three), is hereby repealed, effective on and after the first day of the calendar month next succeeding the date of the passage of this act: *Provided*, That nothing in this Act shall be construed to affect any right or privilege accrued, any penalty or liability incurred, or any proceeding commenced under said act of August eighteenth, nineteen hundred and fourteen, or to diminish any authority conferred by said Act on any official of the United States necessary to enable him to carry out any duties remaining to be performed by him under the said Act, or to impair the effect of the findings of the Secretary of Agriculture upon any dispute referred to him under said Act,

or to affect any right in respect to, or arising out of, any contract mentioned in section three of said Act, made on or subsequent to February eighteenth, nineteen hundred and fifteen, and prior to the first day of the calendar month next succeeding the date of the passage of this Act, but so far as concerns any such contract said Act of August eighteenth, nineteen hundred and fourteen, shall remain in force with the same effect as if this Act had not been passed. [39 Stat. L. 482.]

See the notes to section 1 of this Act, *supra*, p. 359.

For the Cotton Futures Act of Aug. 18, 1914, ch. 255, repealed by this section, see 1916 Supp. Fed. Stat. Ann. 73; 4 Fed. Stat. Ann. (2d ed.) 277. See also the notes to section 1 of this Act, *supra*, p. 359.

SEC. 22. [Invalidity of part of Act—effect on balance.] That if any clause, sentence, paragraph, or part of this Act shall for any reason be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, or part thereof directly involved in the controversy in which such judgment shall have been rendered. [39 Stat. L. 482.]

See the notes to section 1 of this Act, *supra*, p. 359.

XIV. STAMP TAXES

SEC. 800. [Instruments, etc., affected by title.] That on and after the first day of December, nineteen hundred and seventeen, there shall be levied, collected, and paid, for and in respect of the several bonds, debentures, or certificates of stock and of indebtedness, and other documents, instruments, matters, and things mentioned and described in Schedule A of this title, or for or in respect of the vellum, parchment, or paper upon which such instruments, matters, or things, or any of them, are written or printed, by any person, corporation, partnership, or association who makes, signs, issues, sells, removes, consigns, or ships the same, or for whose use or benefit the same are made, signed, issued, sold, removed, consigned, or shipped, the several taxes specified in such schedule. [—Stat. L. —]

The foregoing section 800 and the following sections 801–807 (including schedule A) constitute “Title VIII.—War Stamp Taxes” of the Act of Oct. 3, 1917, ch. —, entitled “An Act To provide revenue to defray war expenses and for other purposes.” General administrative provisions of this Act, which affect these sections and should be read in connection therewith, are given in the following subdivision XV of this title, *infra*, p. 374.

SEC. 801. [Exemptions — government instruments.] That there shall not be taxed under this title any bond, note, or other instrument, issued by the United States, or by any foreign Government, or by any State, Territory or the District of Columbia, or local subdivision thereof, or municipal or other corporation exercising the taxing power, when issued in the exercise of a strictly governmental, taxing, or municipal function; or stocks and bonds issued by cooperative building and loan associations which are

organized and operated exclusively for the benefit of their members and make loans only to their shareholders, or by mutual ditch or irrigating companies. [— *Stat. L.* —.]

See the note to the preceding section 800 of this Act.

SEC. 802. [Failure to pay tax — punishment.] That whoever—

(a) Makes, signs, issues, or accepts, or causes to be made, signed, issued, or accepted, any instrument, document, or paper of any kind or description whatsoever without the full amount of tax thereon being duly paid;

(b) Consigns or ships, or causes to be consigned or shipped, by parcel post any parcel, package, or article without the full amount of tax being duly paid;

(c) Manufactures or imports and sells, or offers for sale, or causes to be manufactured or imported and sold, or offered for sale, any playing cards, package, or other article without the full amount of tax being duly paid;

(d) Makes use of any adhesive stamp to denote any tax imposed by this title without canceling or obliterating such stamp as prescribed in section eight hundred and four;

Is guilty of a misdemeanor and upon conviction thereof shall pay a fine of not more than \$100 for each offense. [— *Stat. L.* —.]

See the note to section 800 of this Act, *supra*, p. 368.

SEC. 803. [Fraudulently tampering with stamped instruments or used stamps — penalty.] That whoever—

(a) Fraudulently cuts, tears, or removes from any vellum, parchment, paper, instrument, writing, package, or article, upon which any tax is imposed by this title, any adhesive stamp or the impression of any stamp, die, plate, or other article provided, made, or used in pursuance of this title;

(b) Fraudulently uses, joins, fixes, or places to, with, or upon any vellum, parchment, paper, instrument, writing, package, or article, upon which any tax is imposed by this title, (1) any adhesive stamp, or the impression of any stamp, die, plate, or other article, which has been cut, torn, or removed from any other vellum, parchment, paper, instrument, writing, package, or article, upon which any tax is imposed by this title; or (2) any adhesive stamp or the impression of any stamp, die, plate, or other article of insufficient value; or (3) any forged or counterfeit stamp, or the impression of any forged or counterfeited stamp, die, plate, or other article;

(c) Willfully removes, or alters the cancellation, or defacing marks of, or otherwise prepares, any adhesive stamp, with intent to use, or cause the same to be used, after it has been already used, or knowingly or willfully buys, sells, offers for sale, or gives away, any such washed or restored stamp to any person for use, or knowingly uses the same;

(d) Knowingly and without lawful excuse (the burden of proof of such excuse being on the accused) has in possession any washed, restored, or altered stamp, which has been removed from any vellum, parchment, paper, instrument, writing, package, or article, is guilty of a misdemeanor, and upon conviction shall be punished by a fine of not more than \$1,000, or by imprisonment for not more than five years, or both, in the discretion of the

court, and any such reused, canceled, or counterfeit stamp and the vellum, parchment, document, paper, package, or article upon which it is placed or impressed shall be forfeited to the United States. [— *Stat. L.* —.]

See the note to section 800 of this Act, *supra*, p. 368.

SEC. 804. [Cancellation of stamps.] That whenever an adhesive stamp is used for denoting any tax imposed by this title, except as hereinafter provided, the person, corporation, partnership, or association, using or affixing the same shall write or stamp or cause to be written or stamped thereupon the initials of his or its name and the date upon which the same is attached or used, so that the same may not again be used: *Provided*, That the Commissioner of Internal Revenue may prescribe such other method for the cancellation of such stamps as he may deem expedient. [— *Stat. L.* —.]

See the note to section 800 of this Act, *supra*, p. 368.

SEC. 805. [Preparation and distribution of stamps — collection of stamp taxes omitted from instruments.] (a) That the Commissioner of Internal Revenue shall cause to be prepared and distributed for the payment of the taxes prescribed in this title suitable stamps denoting the tax on the document, articles, or thing to which the same may be affixed, and shall prescribe such method for the affixing of said stamps in substitution for or in addition to the method provided in this title, as he may deem expedient.

(b) The Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, is authorized to procure any of the stamps provided for in this title by contract whenever such stamps can not be speedily prepared by the Bureau of Engraving and Printing; but this authority shall expire on the first day of January, nineteen hundred and eighteen, except as to imprinted stamps furnished under contract, authorized by the Commissioner of Internal Revenue.

(c) All internal-revenue laws relating to the assessment and collection of taxes are hereby extended to and made a part of this title, so far as applicable, for the purpose of collecting stamp taxes omitted through mistake or fraud from any instrument, document, paper, writing, parcel, package, or article named herein. [— *Stat. L.* —.]

See the note to section 800 of this Act, *supra*, p. 368.

SEC. 806. [Distribution of stamps — increased bond by postmaster — disposition of receipts from sale.] That the Commissioner of Internal Revenue shall furnish to the Postmaster General without prepayment a suitable quantity of adhesive stamps to be distributed to and kept on sale by the various postmasters in the United States. The Postmaster General may require each such postmaster to give additional or increased bond as postmaster for the value of the stamps so furnished, and each such postmaster shall deposit the receipts from the sale of such stamps to the credit of and render accounts to the Postmaster General at such times and in such form as he may by regulations prescribe. The Postmaster General shall at least once monthly transfer all collections from this source to the Treasury as internal-revenue collections. [— *Stat. L.* —.]

See the note to section 800 of this Act, *supra*, p. 368.

Sec. 807. [Distribution of stamps — bond given by persons selling — regulations.] That the collectors of the several districts shall furnish without prepayment to any assistant treasurer or designated depository of the United States located in their respective collection districts a suitable quantity of adhesive stamps for sale. In such cases the collector may require a bond, with sufficient sureties, to an amount equal to the value of the adhesive stamps so furnished, conditioned for the faithful return, whenever so required, of all quantities or amounts undisposed of, and for the payment monthly of all quantities or amounts sold or not remaining on hand. The Secretary of the Treasury may from time to time make such regulations as he may find necessary to insure the safe-keeping or prevent the illegal use of all such adhesive stamps.

SCHEDULE A.— STAMP TAXES.

1. *Bonds of indebtedness:* Bonds, debentures, or certificates of indebtedness issued on and after the first day of December, 'nineteen hundred and seventeen, by any person, corporation, partnership, or association, on each \$100 of face value or fraction thereof, 5 cents: *Provided*, That every renewal of the foregoing shall be taxed as a new issue: *Provided further*, That when a bond conditioned for the repayment or payment of money is given in a penal sum greater than the debt secured, the tax shall be based upon the amount secured.

2. *Bonds, indemnity and surety:* Bonds for indemnifying any person, corporation, partnership, or corporation who shall have become bound or engaged as surety, and all bonds for the due execution or performance of any contract, obligation, or requirement, or the duties of any office or position, and to account for money received by virtue thereof, and all other bonds of any description, except such as may be required in legal proceedings, not otherwise provided for in this schedule, 50 cents: *Provided*, That where a premium is charged for the execution of such bond the tax shall be paid at the rate of one per centum on each dollar or fractional part thereof of the premium charged: *Provided further*, That policies of reinsurance shall be exempt from the tax imposed by this subdivision.

3. *Capital stock, issue:* On each original issue, whether an organization or reorganization, of certificates of stock by any association, company, or corporation, on each \$100 of face value or fraction thereof, 5 cents: *Provided*, That where capital stock is issued without face value, the tax shall be 5 cents per share, unless the actual value is in excess of \$100 per share, in which case the tax shall be 5 cents on each \$100 of actual value or fraction thereof.

The stamps representing the tax imposed by this subdivision shall be attached to the stock books and not to the certificates issued.

4. *Capital stock, sales or transfers:* On all sales, or agreements to sell, or memoranda of sales or deliveries of, or transfers of legal title to shares or certificates of stock in any association, company, or corporation, whether made upon or shown by the books of the association, company, or corporation, or by any assignment in blank, or by any delivery, or by any paper or agreement or memorandum or other evidence of transfer or sale, whether entitling the holder in any manner to the benefit of such stock or not, on

court, and any such reused, canceled, or counterfeit stamp and the vellum, parchment, document, paper, package, or article upon which it is placed or impressed shall be forfeited to the United States. [— *Stat. L.* —.]

See the note to section 800 of this Act, *supra*, p. 368.

SEC. 804. [Cancellation of stamps.] That whenever an adhesive stamp is used for denoting any tax imposed by this title, except as hereinafter provided, the person, corporation, partnership, or association, using or affixing the same shall write or stamp or cause to be written or stamped thereupon the initials of his or its name and the date upon which the same is attached or used, so that the same may not again be used: *Provided*, That the Commissioner of Internal Revenue may prescribe such other method for the cancellation of such stamps as he may deem expedient. [— *Stat. L.* —.]

See the note to section 800 of this Act, *supra*, p. 368.

SEC. 805. [Preparation and distribution of stamps — collection of stamp taxes omitted from instruments.] (a) That the Commissioner of Internal Revenue shall cause to be prepared and distributed for the payment of the taxes prescribed in this title suitable stamps denoting the tax on the document, articles, or thing to which the same may be affixed, and shall prescribe such method for the affixing of said stamps in substitution for or in addition to the method provided in this title, as he may deem expedient.

(b) The Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, is authorized to procure any of the stamps provided for in this title by contract whenever such stamps can not be speedily prepared by the Bureau of Engraving and Printing; but this authority shall expire on the first day of January, nineteen hundred and eighteen, except as to imprinted stamps furnished under contract, authorized by the Commissioner of Internal Revenue.

(c) All internal-revenue laws relating to the assessment and collection of taxes are hereby extended to and made a part of this title, so far as applicable, for the purpose of collecting stamp taxes omitted through mistake or fraud from any instrument, document, paper, writing, parcel, package, or article named herein. [— *Stat. L.* —.]

See the note to section 800 of this Act, *supra*, p. 368.

SEC. 806. [Distribution of stamps — increased bond by postmaster — disposition of receipts from sale.] That the Commissioner of Internal Revenue shall furnish to the Postmaster General without prepayment a suitable quantity of adhesive stamps to be distributed to and kept on sale by the various postmasters in the United States. The Postmaster General may require each such postmaster to give additional or increased bond as postmaster for the value of the stamps so furnished, and each such postmaster shall deposit the receipts from the sale of such stamps to the credit of and render accounts to the Postmaster General at such times and in such form as he may by regulations prescribe. The Postmaster General shall at least once monthly transfer all collections from this source to the Treasury as internal-revenue collections. [— *Stat. L.* —.]

See the note to section 800 of this Act, *supra*, p. 368.

Sec. 807. [Distribution of stamps — bond given by persons selling — regulations.] That the collectors of the several districts shall furnish without prepayment to any assistant treasurer or designated depository of the United States located in their respective collection districts a suitable quantity of adhesive stamps for sale. In such cases the collector may require a bond, with sufficient sureties, to an amount equal to the value of the adhesive stamps so furnished, conditioned for the faithful return, whenever so required, of all quantities or amounts undisposed of, and for the payment monthly of all quantities or amounts sold or not remaining on hand. The Secretary of the Treasury may from time to time make such regulations as he may find necessary to insure the safe-keeping or prevent the illegal use of all such adhesive stamps.

SCHEDULE A.— STAMP TAXES.

1. *Bonds of indebtedness:* Bonds, debentures, or certificates of indebtedness issued on and after the first day of December, nineteen hundred and seventeen, by any person, corporation, partnership, or association, on each \$100 of face value or fraction thereof, 5 cents: *Provided*, That every renewal of the foregoing shall be taxed as a new issue: *Provided further*, That when a bond conditioned for the repayment or payment of money is given in a penal sum greater than the debt secured, the tax shall be based upon the amount secured.

2. *Bonds, indemnity and surety:* Bonds for indemnifying any person, corporation, partnership, or corporation who shall have become bound or engaged as surety, and all bonds for the due execution or performance of any contract, obligation, or requirement, or the duties of any office or position, and to account for money received by virtue thereof, and all other bonds of any description, except such as may be required in legal proceedings, not otherwise provided for in this schedule, 50 cents: *Provided*, That where a premium is charged for the execution of such bond the tax shall be paid at the rate of one per centum on each dollar or fractional part thereof of the premium charged: *Provided further*, That policies of reinsurance shall be exempt from the tax imposed by this subdivision.

3. *Capital stock, issue:* On each original issue, whether an organization or reorganization, of certificates of stock by any association, company, or corporation, on each \$100 of face value or fraction thereof, 5 cents: *Provided*, That where capital stock is issued without face value, the tax shall be 5 cents per share, unless the actual value is in excess of \$100 per share, in which case the tax shall be 5 cents on each \$100 of actual value or fraction thereof.

The stamps representing the tax imposed by this subdivision shall be attached to the stock books and not to the certificates issued.

4. *Capital stock, sales or transfers:* On all sales, or agreements to sell, or memoranda of sales or deliveries of, or transfers of legal title to shares or certificates of stock in any association, company, or corporation, whether made upon or shown by the books of the association, company, or corporation, or by any assignment in blank, or by any delivery, or by any paper or agreement or memorandum or other evidence of transfer or sale, whether entitling the holder in any manner to the benefit of such stock or not, on

be determined by the actual commercial differences in value thereof upon the sixth business day prior to the day fixed, in accordance with the sixth subdivision of section five, for the delivery of cotton on the contract, established by the sale of spot cotton in the market where the future transaction involved occurs and is consummated if such market be a bona fide spot market; and in the event there be no bona fide spot market at or in the place in which such future transaction occurs, then, and in that case, the said differences above or below the contract price which the receiver shall pay for cotton above or below the basis grade shall be determined by the average actual commercial differences in value thereof, upon the sixth business day prior to the day fixed, in accordance with the sixth subdivision of section five, for the delivery of cotton on the contract, in the spot markets of not less than five places designated for the purpose from time to time by the Secretary of Agriculture, as such values were established by the sales of spot cotton, in such designated five or more markets: *Provided*, That for the purposes of this section such values in the said spot markets be based upon the standards for grades of cotton established by the Secretary of Agriculture: *And provided further*, That whenever the value of one grade is to be determined from the sale or sales of spot cotton of another grade or grades, such value shall be fixed in accordance with rules and regulations which shall be prescribed for the purpose by the Secretary of Agriculture. [39 Stat. L. 478.]

See the notes to section 1 of this Act, *supra*, p. 359.

Sec. 6A. [Contracts when exempt from tax.] That no tax shall be levied under this Act on any contract of sale mentioned in section three hereof if the contract provide that, in case cotton of grade or grades other than the basis grade specified in the contract shall be tendered in performance of the contract, the parties to such contract may agree, at the time of the tender, as to the price of the grade or grades so tendered, and that if they shall not then agree as to such price, then, and in that event, the buyer of said contract shall have the right to demand the specific fulfillment of such contract by the actual delivery of cotton of the basis grade named therein and at the price specified for such basis grade in said contract, and if the contract also comply with all the terms and conditions of section five hereof not inconsistent with this section: *Provided*, That nothing in this section shall be so construed as to relieve from the tax levied by section three of this Act any contract in which, or in the settlement of or in respect to which, any device or arrangement whatever is resorted to, or any agreement is made, for the determination or adjustment of the price of the grade or grades tendered other than the basis grade specified in the contract by any "fixed difference" system, or by arbitration, or by any other method not provided for by this Act.

Contracts made in compliance with this section shall be known as "Section six A Contracts." The provisions of this section shall be deemed fully incorporated into any such contract if there be written or printed thereon, or on the memorandum evidencing the same, at or prior to the time the same is signed, the phrase "Subject to United States cotton futures Act, section six A."

Section ten of this Act shall not be construed to apply to any contract of sale made in compliance with section six A hereof. [39 Stat. L. 478.]

See the notes to section 1 of this Act, *supra*, p. 359.

SEC. 7. [Bona fide spot markets — designation.] That for the purposes of this Act the only markets which shall be considered bona fide spot markets shall be those which the Secretary of Agriculture shall, from time to time, after investigation, determine and designate to be such, and of which he shall give public notice. [39 Stat. L. 478.]

See the notes to section 1 of this Act, *supra*, p. 359.

SEC. 8. [Insufficient spot markets.] That in determining, pursuant to the provisions of this Act, what markets are bona fide spot markets, the Secretary of Agriculture is directed to consider only markets in which spot cotton is sold in such volume and under such conditions as customarily to reflect accurately the value of middling cotton and the differences between the prices or values of middling cotton and of other grades of cotton for which standards shall have been established by the Secretary of Agriculture: *Provided*, That if there be not sufficient places, in the markets of which are made bona fide sales of spot cotton of grades for which standards are established by the Secretary of Agriculture, to enable him to designate at least five spot markets in accordance with section six of this Act, he shall, from data as to spot sales collected by him, make rules and regulations for determining the actual commercial differences in the value of spot cotton of the grades established by him as reflected by bona fide sales of spot cotton, of the same or different grades, in the markets selected and designated by him, from time to time, for that purpose, and in that event, differences in value of cotton of various grades involved in contracts made pursuant to section five of this Act shall be determined in compliance with such rules and regulations. [39 Stat. L. 479.]

See the notes to section 1 of this Act, *supra*, p. 359.

SEC. 9. [Standards of cotton established — changes of standards — preparation of forms.] That the Secretary of Agriculture is authorized, from time to time, to establish and promulgate standards of cotton by which its quality or value may be judged or determined, including its grade, length of staple, strength of staple, color, and such other qualities, properties, and conditions as may be standardized in practical form, which, for the purposes of this Act, shall be known as the "Official cotton standards of the United States," and to adopt, change, or replace, the standard for any grade of cotton established under the Act making appropriations for the Department of Agriculture for the fiscal year ending June thirtieth, nineteen hundred and nine (Thirty-fifth Statutes at Large, page two hundred and fifty-one), and Acts supplementary thereto: *Provided*, That any standard of any cotton established and promulgated under this Act by the Secretary of Agriculture shall not be changed or replaced within a period less than one year from and after the date of promulgation thereof by the Secretary of Agriculture: *Provided further*, That, subsequent to six months after the date section three of this Act becomes effective, no change

or replacement of any standard of any cotton established and promulgated under this Act by the Secretary of Agriculture shall become effective until after one year's public notice thereof, which notice shall specify the date when the same is to become effective. The Secretary of Agriculture is authorized and directed to prepare practical forms of the official cotton standards which shall be established by him, and to furnish such practical forms from time to time, upon request, to any person, the cost thereof, as determined by the Secretary of Agriculture, to be paid by the person requesting the same, and to certify such practical forms under the seal of the Department of Agriculture and under the signature of the said Secretary, thereto affixed by himself or by some official or employee of the Department of Agriculture thereunto duly authorized by the said Secretary. [39 Stat. L. 479.]

See the notes to section 1 of this Act, *supra*, p. 359.

For the provisions of the Agricultural Appropriation Act of May 23, 1908, ch. 192, § 1, mentioned in this section, see 1909 Supp. Fed. Stat. Ann. 6; 1 Fed. Stat. Ann. (2d ed.) 239.

SEC. 10. [Contracts when exempt from tax — conforming to rules, etc.] That no tax shall be levied under this Act on any contract of sale mentioned in section three hereof, if the contract comply with each of the following conditions:

First. Conform to the rules and regulations made pursuant to this Act.

Second. Specify the grade, type, sample, or description of the cotton involved in the contract, the price per pound at which such cotton is contracted to be bought or sold, the date of the purchase or sale, and the time when shipment or delivery of such cotton is to be made.

Third. Provide that cotton of or within the grade or of the type, or according to the sample or description, specified in the contract shall be delivered thereunder, and that no cotton which does not conform to the type, sample, or description, or which is not of or within the grade specified in the contract shall be tendered or delivered thereunder.

Fourth. Provide that the delivery of cotton under the contract shall not be effected by means of "set-off" or "ring" settlement, but only by the actual transfer of the specified cotton mentioned in the contract.

The provisions of the first, third, and fourth subdivisions of this section shall be deemed fully incorporated into any such contract if there be written or printed thereon, or on the document or memorandum evidencing the same, at or prior to the time the same is entered into, the words "Subject to United States cotton futures Act, section ten."

This Act shall not be construed to impose a tax on any sale of spot cotton.

This section shall not be construed to apply to any contract of sale made in compliance with section five of this Act. [39 Stat. L. 479.]

See the notes to section 1 of this Act, *supra*, p. 359.

This section was not to be construed to apply to any contract of sale made in compliance with section 6A of this Act, *supra*, p. 362, by virtue of the last paragraph thereof.

SEC. 11. [Payment of tax — stamps.] That the tax imposed by section three of this Act shall be paid by the seller of the cotton involved in

the contract of sale, by means of stamps which shall be affixed to such contracts, or to the memoranda evidencing the same, and canceled in compliance with rules and regulations which shall be prescribed by the Secretary of the Treasury. [39 Stat. L. 480.]

See the notes to section 1 of this Act, *supra*, p. 359.

SEC. 12. [Unenforceable contracts.] That no contract of sale of cotton for future delivery mentioned in section three of this Act which does not conform to the requirements of section four hereof and has not the necessary stamps affixed thereto as required by section eleven hereof shall be enforceable in any court of the United States by, or on behalf of, any party to such contract or his privies. [39 Stat. L. 480.]

See the notes to section 1 of this Act, *supra*, p. 359.

SEC. 13. [Enforcement of Act — rules and regulations — agents.] That the Secretary of the Treasury is authorized to make and promulgate such rules and regulations as he may deem necessary to collect the tax imposed by this Act and otherwise to enforce its provisions. Further to effect this purpose, he shall require all persons coming within its provisions to keep such records and statements of account, and may require such persons to make such returns verified under oath or otherwise, as will fully and correctly disclose all transactions mentioned in section three of this Act, including the making, execution, settlement, and fulfillment thereof; he may require all persons who act in the capacity of a clearing house, clearing association, or similar institution for the purpose of clearing, settling, or adjusting transactions mentioned in section three of this Act to keep such records and to make such returns as will fully and correctly disclose all facts in their possession relating to such transactions; and he may appoint agents to conduct the inspection necessary to collect said tax and otherwise to enforce this Act and all rules and regulations made by him in pursuance hereof, and may fix the compensation of such agents. The provisions of the internal-revenue laws of the United States, so far as applicable, including sections thirty-one hundred and seventy-three, thirty-one hundred and seventy-four, and thirty-one hundred and seventy-five of the Revised Statutes, as amended, are hereby extended, and made to apply, to this Act. [39 Stat. L. 480.]

See the notes to section 1 of this Act, *supra*, p. 359.

For R. S. secs. 3173, 3174 and 3175, mentioned in this section, see 3 Fed. Stat. Ann. 377-379; 3 Fed. Stat. Ann. (2d ed.) 1002-1005.

SEC. 14. [Penalties for violation of Act.] That any person liable to the payment of any tax imposed by this Act who fails to pay, or evades or attempts to evade the payment of such tax, and any person who otherwise violates any provision of this Act, or any rule or regulation made in pursuance hereof, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than \$100 nor more than \$20,000, in the discretion of the court; and, in case of natural persons, may, in addition, be punished by imprisonment for not less than sixty days nor more than three years, in the discretion of the court. [39 Stat. L. 480.]

See the notes to section 1 of this Act, *supra*, p. 359.

SEC. 15. [Informers rewarded—prosecution by United States attorneys when.] That in addition to the foregoing punishment there is hereby imposed, on account of each violation of this Act, a penalty of \$2,000, to be recovered in an action founded on this Act in the name of the United States as plaintiff, and when so recovered one-half of said amount shall be paid over to the person giving the information upon which such recovery was based. It shall be the duty of United States attorneys, to whom satisfactory evidence of violations of this Act is furnished, to institute and prosecute actions for the recovery of the penalties prescribed by this section. [39 Stat. L. 481.]

See the notes to section 1 of this Act, *supra*, p. 359.

SEC. 16. [Witnesses—immunity from prosecution.] That no person whose evidence is deemed material by the officer prosecuting on behalf of the United States in any case brought under any provision of this Act shall withhold his testimony because of complicity by him in any violation of this Act or of any regulation made pursuant to this Act, but any such person called by such officer who testifies in such case shall be exempt from prosecution for any offense to which his testimony relates. [39 Stat. L. 481.]

See the notes to section 1 of this Act, *supra*, p. 359.

SEC. 17. [Exemption from penalty of person paying tax—right of states, etc., to tax.] That the payment of any tax levied by this Act shall not exempt any person from any penalty or punishment now or hereafter provided by the laws of any State for entering into contracts of sale of cotton for future delivery, nor shall the payment of any tax imposed by this Act be held to prohibit any State or municipality from imposing a tax on the same transaction. [39 Stat. L. 481.]

See the notes to section 1 of this Act, *supra*, p. 359.

SEC. 18. [Appropriation for enforcing Act.] That there is hereby appropriated, out of any moneys in the Treasury not otherwise appropriated, for the fiscal year ending June thirtieth, nineteen hundred and sixteen, the unexpended balance of the sum appropriated by the Act of March fourth, nineteen hundred and fifteen (Thirty-eighth Statutes at Large, page one thousand and seventeen), for "collecting the cotton futures tax," or so much thereof as may be necessary, to enable the Secretary of the Treasury to carry out the provisions of this Act and any duties remaining to be performed by him under the United States cotton futures Act of August eighteenth, nineteen hundred and fourteen (Thirty-eighth Statutes at Large, page six hundred and ninety-three). [39 Stat. L. 481.]

See the notes to section 1 of this Act, *supra*, p. 359.

The Act making an appropriation for "collecting the cotton futures tax" mentioned in this section is the Legislative, Executive, and Judicial Appropriation Act of March 4, 1915, ch. 141, § 1, 38 Stat. L. 1017.

For the Act of Aug. 18, 1914, ch. 255, mentioned in this section, see 1916 Supp. Fed. Stat. Ann. 73; 4 Fed. Stat. Ann. (2d ed.) 277. See also the notes to section 1 of this Act, *supra*, p. 359.

SEC. 19. [Appropriation for making investigations, etc.—reports—disposition of receipts.] That there are hereby appropriated out of any

moneys in the Treasury not otherwise appropriated, available until expended, the unexpended balance of the sum of \$150,000 appropriated by section twenty of the said Act of August eighteenth, nineteen hundred and fourteen, and for the fiscal year ending June thirtieth, nineteen hundred and sixteen, the unexpended balance of the sum of \$75,000 appropriated for the "Enforcement of the United States cotton futures Act" by the Act making appropriations for the Department of Agriculture for the fiscal year ending June thirtieth, nineteen hundred and sixteen (Thirty-eighth Statutes at Large, page one thousand and eighty-six), or so much of each of said unexpended balances as may be necessary, to be used by the Secretary of Agriculture for the same purposes, in carrying out the provisions of this Act, as those for which said sums, respectively, were originally appropriated, and to enable the Secretary of Agriculture to carry out any duties remaining to be performed by him under the said Act of August eighteenth, nineteen hundred and fourteen. The Secretary of Agriculture is hereby directed to publish from time to time the results of investigations made in pursuance of this Act. All sums collected by the Secretary of Agriculture as costs under section five, or for furnishing practical forms under section nine, of this Act, shall be deposited and covered into the Treasury as miscellaneous receipts. [39 Stat. L. 481.]

See the notes to section 1 of this Act, *supra*, p. 359.

For a reference to the Act of Aug. 18, 1914, ch. 255, mentioned in this section, see the notes to the preceding section 18 of this Act.

SEC. 20. [Time of taking effect.] That sections nine, eighteen, and nineteen of this Act and all provisions of this Act authorizing rules and regulations to be prescribed shall be effective immediately. All other sections of this Act shall become and be effective on and after the first day of the calendar month next succeeding the date of the passage of this Act: *Provided*, That nothing in this Act shall be construed to apply to any contract of sale of any cotton for future delivery mentioned in section three of this Act which shall have been made prior to the first day of the calendar month next succeeding the date of the passage of this Act. [39 Stat. L. 481.]

See the notes to section 1 of this Act, *supra*, p. 359.

SEC. 21. [Repeal of prior Act.] That the Act entitled "An Act to tax the privilege of dealing on exchanges, boards of trade, and similar places in contracts of sale of cotton for future delivery, and for other purposes," approved August eighteenth, nineteen hundred and fourteen (Thirty-eighth Statutes at Large, page six hundred and ninety-three), is hereby repealed, effective on and after the first day of the calendar month next succeeding the date of the passage of this act: *Provided*, That nothing in this Act shall be construed to affect any right or privilege accrued, any penalty or liability incurred, or any proceeding commenced under said act of August eighteenth, nineteen hundred and fourteen, or to diminish any authority conferred by said Act on any official of the United States necessary to enable him to carry out any duties remaining to be performed by him under the said Act, or to impair the effect of the findings of the Secretary of Agriculture upon any dispute referred to him under said Act,

(b) Any distribution made to the shareholders or members of a corporation, joint-stock company, or association, or insurance company, in the year nineteen hundred and seventeen, or subsequent tax years, shall be deemed to have been made from the most recently accumulated undivided profits or surplus, and shall constitute a part of the annual income of the distributee for the year in which received, and shall be taxed to the distributee at the rates prescribed by law for the years in which such profits or surplus were accumulated by the corporation, joint-stock company, association, or insurance company, but nothing herein shall be construed as taxing any earnings or profits accrued prior to March first, nineteen hundred and thirteen, but such earnings or profits may be distributed in stock dividends or otherwise, exempt from the tax, after the distribution of earnings and profits accrued since March first, nineteen hundred and thirteen, has been made. This subdivision shall not apply to any distribution made prior to August sixth, nineteen hundred and seventeen, out of earnings or profits accrued prior to March first, nineteen hundred and thirteen. [—*Stat. L.*—]

See the notes to sections 15 and 27 of this Act, *supra*, pp. 374, 378.

SEC. 32. [**Life insurance premiums — deduction.**] That premiums paid on life insurance policies covering the lives of officers, employees, or those financially interested in any trade or business conducted by an individual, partnership, corporation, joint-stock company or association, or insurance company, shall not be deducted in computing the net income of such individual, corporation, joint-stock company or association, or insurance company, or in computing the profits of such partnership for the purposes of subdivision (e) of section nine. [—*Stat. L.*—]

See the notes to sections 15 and 27 of this Act, *supra*, pp. 374, 378.

SEC. 409. [**Existing laws applicable to title.**] That all administrative or special provisions of law, including the law relating to the assessment of taxes, so far as applicable, are hereby extended to and made a part of this title, and every person, firm, company, corporation, or association liable to any tax imposed by this title, shall keep such records and render, under oath, such statements and returns, and shall comply with such regulations as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may from time to time prescribe. [39 *Stat. L.* 792.]

See the notes to section 15 of this Act, *supra*, p. 374.

SEC. 410. [**Certain Acts, etc., repealed.**] That the Act approved October twenty-second, nineteen hundred and fourteen, entitled "An Act to increase the internal revenue, and for other purposes," and the joint resolution approved December seventeenth, nineteen hundred and fifteen, entitled "Joint resolution extending the provisions of the Act entitled 'An Act to increase the internal revenue, and for other purposes,' approved October twenty-second, nineteen hundred and fourteen, to December thirty-first, nineteen hundred and sixteen," are hereby repealed, except sections three and four of such Act as so extended, which sections shall remain in force till January first, nineteen hundred and seventeen, and except that the provisions of the said Act shall remain in force for the assessment and

collection of all special taxes imposed by sections three and four thereof, or by such sections as extended by said joint resolution, for any year or part thereof ending prior to January first, nineteen hundred and seventeen, and of all other taxes imposed by such Act, or by such Act as so extended, accrued prior to the taking effect of this title, and for the imposition and collection of all penalties or forfeitures which have accrued or may accrue in relation to any of such taxes. [39 Stat. L. 792.]

See the notes to section 15 of this Act, *supra*, p. 374.

For the Act of Oct. 22, 1914, ch. 331, repealed by this section, see 1916 Supp. Fed. Stat. Ann. 80; 4 Fed. Stat. Ann. (2d ed.) 136, and the references in the notes to the first section thereof.

For the Res. of Dec. 17, 1917, No. 2, repealed by this section, see 1916 Supp. Fed. Stat. Ann. 110; 4 Fed. Stat. Ann. (2d ed.) 306.

SEC. 411. [Redemption of stamps.] That the Commissioner of Internal Revenue, subject to regulation prescribed by the Secretary of the Treasury, may make allowance for or redeem stamps, issued, under authority of the Act approved October twenty-second, nineteen hundred and fourteen, entitled "An Act to increase the internal revenue, and for other purposes," and the joint resolution approved December seventeenth, nineteen hundred and fifteen, entitled "Joint resolution extending the provisions of the Act entitled 'An Act to increase the internal revenue, and for other purposes,' approved October twenty-second, nineteen hundred and fourteen, to December thirty-first, nineteen hundred and sixteen," to denote the payment of internal revenue tax, and which have not been used, if presented within two years after the purchase of such stamps: [39 Stat. L. 793.]

See the notes to section 15 of this Act, *supra*, p. 374.

For a reference to the Acts mentioned in this section, see the notes to the preceding section 410 of this Act.

Similar provisions, with a different time limit, were made by the Act of April 17, 1917, ch. —, § 1, *infra*, p. 382.

SEC. 412. [Time of taking effect of provisions of title.] That the provisions of this title shall take effect on the day following the passage of this Act, except where otherwise in this title provided. [39 Stat. L. 793.]

See the notes to section 15 of this Act, *supra*, p. 374.

SEC. 900. [Invalidity of part of Act — effect on remainder.] That if any clause, sentence, paragraph, or part of this Act shall for any reason be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder of said act, but shall be confined in its operation to the clause, sentence, paragraph, or part thereof directly involved in the controversy in which such judgment shall have been rendered. [39 Stat. L. 800.]

See the notes to section 15 of this Act, *supra*, p. 374.

SEC. 901. [Amendment of certain existing Act.] The Act approved August twenty-ninth, nineteen hundred and sixteen, being an Act making appropriations for the support of the Army for the fiscal year ending

June thirtieth, nineteen hundred and seventeen, and for other purposes, is hereby amended as follows:

“The sum of \$2,000,000, therein appropriated to be expended under the direction of the Secretary of War for the support of the family of each enlisted man of the Organized Militia or National Guard, or of the Regular Army, as therein provided, shall be available to be paid on the basis of and for time subsequent to June eighteenth, nineteen hundred and sixteen, the date of the call by the President, and the time for which such payment shall be made shall correspond with the time of service of the enlisted men, and payment shall be made without reference to the enlisted man having enlisted before or after the call by the President.” [39 Stat. L. 801.]

See the notes to section 15 of this Act, *supra*, p. 374.

The provisions of the Act of Aug. 29, 1916, ch. 418, § 1, amended by this section are given in 6 Fed. Stat. Ann. (2d ed.) 451, and this section is set out on the following page 452 of that volume.

SEC. 902. [Time of taking effect of Act.] That unless otherwise herein specially provided, this Act shall take effect on the day following its passage, and all provisions of any Act or Acts inconsistent with the provisions of this Act are hereby repealed. [39 Stat. L. 801.]

See the notes to section 15 of this Act, *supra*, p. 374.

[SEC. 1.] **[Redemption of stamps.]** * * * The Commissioner of Internal Revenue, subject to regulation prescribed by the Secretary of the Treasury, may make allowance for or redeem stamps, issued under authority of the Act approved October twenty-second, nineteen hundred and fourteen, entitled “An Act to increase the internal revenue, and for other purposes,” and the joint resolution approved December seventeenth, nineteen hundred and fifteen, entitled “Joint resolution extending the provisions of the Act entitled ‘An Act to increase the internal revenue, and for other purposes,’ approved October twenty-second, nineteen hundred and fourteen, to December thirty-first, nineteen hundred and sixteen,” to denote the payment of internal revenue tax, and which have not been used, if presented prior to January first, nineteen hundred and eighteen. [— Stat. L. —.]

This is from the Deficiencies Appropriation Act of April 17, 1917, ch. —.

For the Act of Oct. 22, 1914, ch. 331, mentioned in this section, see 1916 Supp. Fed. Stat. Ann. 80; 4 Fed. Stat. Ann. (2d ed.) 284.

For the Res. of Dec. 17, 1915, No. 2, mentioned in this section, see 1916 Supp. Fed. Stat. Ann. 110; 4 Fed. Stat. Ann. (2d ed.) 306.

Similar provisions with a different time limit were made by the Act of Sept. 8, 1916, ch. 463, § 411, *supra*, p. 361.

SEC. 1000. [Imports from and exports to Virgin Islands — amount of tax.] That there shall be levied, collected, and paid in the United States, upon articles coming into the United States from the West Indian Islands acquired from Denmark, a tax equal to the internal-revenue tax imposed in the United States upon like articles of domestic manufacture; such

articles shipped from said islands to the United States shall be exempt from the payment of any tax imposed by the internal-revenue laws of said islands: *Provided*, That there shall be levied, collected, and paid in said islands, upon articles imported from the United States, a tax equal to the internal-revenue tax imposed in said islands upon like articles there manufactured; and such articles going into said islands from the United States shall be exempt from payment of any tax imposed by the internal-revenue laws of the United States. [— *Stat. L.* —.]

The foregoing section 1000 and the following sections 1001-1009 are a part of the Act of Oct. 3, 1917, ch. —, entitled "An Act To provide revenue to defray war expenses and for other purposes." This Act consisted of thirteen titles, as follows:

"Title I.—War Income Tax" given under subdivision VII of this title, *supra*, p. 312.

"Title II.—War Excess Profits Tax" given under subdivision IX of this title, *supra*, p. 341.

"Title III.—War Tax on Beverages" given under subdivision IV of this title, *supra*, p. 286.

"Title IV.—War Tax on Cigars, Tobacco, and Manufacturers Thereof" given under subdivision V of this title, *supra*, p. 303.

"Title V.—War Tax on Facilities Furnished by Public Utilities and Insurance" given under subdivision XII of this title, *supra*, p. 355.

"Title VI.—War Excise Tax" given under subdivision VIII of this title, *supra*, p. 273.

"Title VII.—War Tax on Admissions and Dues" given under subdivision XI of this title, *supra*, p. 354.

"Title VIII.—War Stamp Taxes" given under subdivision XIV of this title, *supra*, p. 368.

"Title IX.—War Estate Tax" given under subdivision VI of this title, *supra*, p. 305.

"Title X.—Administrative Provisions" consisting of the foregoing section 1000 and the following sections 1001-1009.

"Title XI.—Postal Rates" given under *POSTAL SERVICE*, *post*.

"Title XII.—Income Tax Amendments" consisting of sections 1200-1212, all of which except the last section which is given *supra*, p. 336, constituted amendments to various sections of the Act of Sept. 8, 1916, ch. 463, and are incorporated therein as set out within this title.

"Title XIII.—General Provisions" consisting of sections 1300-1302 which are set out, *infra*, p. 386.

SEC. 1001. [Certain laws made part of Act—records and returns.] That all administrative, special, or stamp provisions of law, including the law relating to the assessment of taxes, so far as applicable, are hereby extended to and made a part of this Act, and every person, corporation, partnership, or association liable to any tax imposed by this Act, or for the collection thereof, shall keep such records and render, under oath, such statements and returns, and shall comply with such regulations as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may from time to time prescribe. [— *Stat. L.* —.]

See the notes to the preceding section 1000 of this Act.

SEC. 1002. [Taxes imposed by existing law paid—effect of additional taxes by this Act—extension of time for payment.] That where additional taxes are imposed by this Act upon articles or commodities, upon which the tax imposed by existing law has been paid, the person, corporation, partnership, or association required by this Act to pay the tax shall, within thirty days after its passage, make return under oath in such form and under such regulations as the Commissioner of Internal Revenue with

the approval of the Secretary of the Treasury shall prescribe. Payment of the tax shown to be due may be extended to a date not exceeding seven months from the passage of this Act, upon the filing of a bond for payment in such form and amount and with such sureties as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may prescribe. [— *Stat. L.* —.]

See the notes to section 1000 of this Act, *supra*, p. 383.

SEC. 1003. [Method of collecting taxes — administrative and penalty provisions of Title VIII when applicable.] That in all cases where the method of collecting the tax imposed by this Act is not specifically provided, the tax shall be collected in such manner as the Commissioner of Internal Revenue with the approval of the Secretary of the Treasury may prescribe. All administrative and penalty provisions of Title VIII of this Act, in so far as applicable, shall apply to the collection of any tax which the Commissioner of Internal Revenue determines or prescribes shall be paid by stamp. [— *Stat. L.* —.]

See the notes to section 1000 of this Act, *supra*, p. 383.

"Title VII.—War Stamp Taxes," mentioned in this section, is given within subdivision XIV of this title, *supra*, p. 368.

SEC. 1004. [Failure to make or fraudulent return — evasion of tax — failure to collect on account — penalties.] That whoever fails to make any return required by this Act or the regulations made under authority thereof within the time prescribed or who makes any false or fraudulent return, and whoever evades or attempts to evade any tax imposed by this Act or fails to collect or truly to account for and pay over any such tax, shall be subject to a penalty of not more than \$1,000, or to imprisonment for not more than one year, or both, at the discretion of the court, and in addition thereto a penalty of double the tax evaded, or not collected, or accounted for and paid over, to be assessed and collected in the same manner as taxes are assessed and collected, in any case in which the punishment is not otherwise specifically provided. [— *Stat. L.* —.]

See the notes to section 1000 of this Act, *supra*, p. 383.

SEC. 1005. [Rules and regulations for enforcement of Act.] That the Commissioner of Internal Revenue with the approval of the Secretary of the Treasury, is hereby authorized to make all needful rules and regulations for the enforcement of the provisions of this Act. [— *Stat. L.* —.]

See the notes to section 1000 of this Act, *supra*, p. 383.

SEC. 1006. [Stamps on hand under previous law — use.] That where the rate of tax imposed by this Act, payable by stamps, is an increase over previously existing rates, stamps on hand in the collectors' offices and in the Bureau of Internal Revenue may continue to be used until the supply on hand is exhausted, but shall be sold and accounted for at the rates provided by this Act, and assessment shall be made against manufacturers and other taxpayers having such stamps on hand on the day this Act takes

effect for the difference between the amount paid for such stamps and the tax due at the rate provided by this act. [— *Stat. L.* —.]

See the notes to section 1000 of this Act, *supra*, p. 383.

SEC. 1007. [Existing executory contracts relating to articles taxed under this Act — payment of tax.] That (a) if any person, corporation, partnership, or association has prior to May ninth, nineteen hundred and seventeen, made a bona fide contract with a dealer for the sale, after the tax takes effect, of any article (or, in the case of moving picture films, such a contract with a dealer, exchange, or exhibitor, for the sale or lease thereof) upon which a tax is imposed under Title III, IV, or VI, or under subdivision thirteen of Schedule A of Title VIII, or under this section, and (b) if such contract does not permit the adding of the whole of such tax to the amount to be paid under such contract, then the vendee or lessee shall, in lieu of the vendor or lessor, pay so much of such tax as is not so permitted to be added to the contract price.

The taxes payable by the vendee or lessee under this section shall be paid to the vendor or lessor at the time the sale or lease is consummated, and collected, returned, and paid to the United States by such vendor or lessor in the same manner as provided in section five hundred and three.

The term "dealer" as used in this section includes a vendee who purchases any article with intent to use it in the manufacture or production of another article intended for sale. [— *Stat. L.* —.]

See the notes to section 1000 of this Act, *supra*, p. 383.

SEC. 1008. [Disregarding fractional part of cent in payment of tax.] That in the payment of any tax under this Act not payable by stamp a fractional part of a cent shall be disregarded unless it amounts to one-half cent or more, in which case it shall be increased to one cent. [— *Stat. L.* —.]

See the notes to section 1000 of this Act, *supra*, p. 383.

SEC. 1009. [Payment in advance and in installments.] That the Secretary of the Treasury, under rules and regulations prescribed by him, shall permit taxpayers liable to income and excess profits taxes to make payments in advance in installments or in whole of an amount not in excess of the estimated taxes which will be due from them, and upon determination of the taxes actually due any amount paid in excess shall be refunded as taxes erroneously collected: *Provided*, That when payment is made in installments at least one-fourth of such estimated tax shall be paid before the expiration of thirty days after the close of the taxable year, at least an additional one-fourth within two months after the close of the taxable year, at least an additional one-fourth within four months after the close of the taxable year, and the remainder of the tax due on or before the time now fixed by law for such payment: *Provided further*, That the Secretary of the Treasury, under rules and regulations prescribed by him, may allow credit against such taxes so paid in advance of an amount not exceeding three per centum per annum calculated upon the amount so paid from the date of such payment to the date now fixed by law for such payment; but no such credit shall be allowed on payments in excess of taxes determined

to be due, nor on payments made after the expiration of four and one-half months after the close of the taxable year. All penalties provided by existing law for failure to pay tax when due are hereby made applicable to any failure to pay the tax at the time or times required in this section. [— *Stat. L.* —.]

See the notes to section 1000 of this Act, *supra*, p. 383.

SEC. 1010. [Certificate of indebtedness received in payment of taxes — uncertified checks.] That under rules and regulations prescribed by the Secretary of the Treasury, collectors of internal revenue may receive, at par and accrued interest, certificates of indebtedness issued under section six of the Act entitled “An Act to authorize an issue of bonds to meet expenditures for the national security and defense, and, for the purpose of assisting in the prosecution of the war, to extend credit to foreign governments, and for other purposes,” approved April twenty-fourth, nineteen hundred and seventeen, and any subsequent Act or Acts; and uncertified checks in payment of income and excess profits taxes, during such time and under such regulations as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall prescribe; but if a check so received is not paid by the bank on which it is drawn the person by whom such check has been tendered shall remain liable for the payment of the tax and for all legal penalties and additions the same as if such check had not been tendered. [— *Stat. L.* —.]

See the notes to section 1000 of this Act, *supra*, p. 383.

For the Act of April 24, 1917, ch. —, § 6, mentioned in this section, see **PUBLIC DEBT**, *post*.

SEC. 1300. [Invalidity of part of Act — effect on remainder.] That if any clause, sentence, paragraph, or part of this Act shall for any reason be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder of said Act, but shall be confined in its operation to the clause, sentence, paragraph, or part thereof directly involved in the controversy in which such judgment shall have been rendered. [— *Stat. L.* —.]

See the notes to section 1000 of this Act, *supra*, p. 383.

SEC. 1301. [Provisions in former Act relating to special preparedness fund — repeal.] That Title I of the Act entitled “An Act to provide increased revenue to defray the expenses of the increased appropriations for the Army and Navy and the extension of fortifications, and for other purposes,” approved March third, nineteen hundred and seventeen, be and the same is hereby repealed. [— *Stat. L.* —.]

See the notes to section 1000 of this Act, *supra*, p. 383.

The provisions repealed by this section are those of the Act of March 3, 1917, ch. 159, title I, 39 Stat. L. 1000.

SEC. 1302. [When Act effective.] That unless otherwise herein specially provided, this Act shall take effect on the day following its passage. [— *Stat. L.* —.]

See the notes to section 1000 of this Act, *supra*, p. 383.

INTERSTATE COMMERCE

Act of Aug. 9, 1916, ch. 301, 387.

Initial Carrier of Goods — Limitation of Liability for Loss — Interstate Commerce Act, sec. 20, Amended, 387.

Act of Aug. 29, 1916, ch. 417, 388.

Transportation of Troops and Material of War — Precedence Given — Interstate Commerce Act, sec. 6, Amended, 388.

Act of May 29, 1917, ch. —, 389.

"Car Service" — Meaning of Term — Rules and Regulations — Promulgation — Suspension by Commission — Interstate Commerce Act, sec. 1, Amended, 389.

Act of Aug. 9, 1917, ch. —, 390.

Sec. 1. Membership of Commission — Salary — Term of Office — Interstate Commerce Act, sec. 24, Amended, 390.

2. Proceedings of Commission — Conduct — Seal, Oaths and Subpoenas — Quorum — Divisions — Salary of Secretary — Interstate Commerce Act, sec. 17, Amended, 390.

3. Salary of Secretary — Interstate Commerce Act, sec. 18, in Part Repealed, 392.

4. New Rates, Classifications, etc. — Filing — Interstate Commerce Act, sec. 15, par. 2, Amended, 392.

Act of Aug. 10, 1917, ch. —, 392.

Obstruction of Interstate or Foreign Commerce During War — Penalty — Use of Armed Forces by President — Preference as to Shipments — Interstate Commerce Act, sec. 1, Amended, 392.

CROSS-REFERENCE

See *BILLS OF LADING*

An Act To amend an Act entitled "An Act to amend an Act entitled 'An Act to amend an Act entitled "An Act to regulate commerce," approved February fourth, eighteen hundred and eighty-seven, and all Acts amendatory thereof, and to enlarge the powers of the Interstate Commerce Commission," approved March fourth, nineteen hundred and fifteen.

[Act of Aug. 9, 1916, ch. 301, 39 Stat. L. 441.]

[Initial carrier of goods — limitation of liability for loss — Interstate Commerce Act, sec. 20 amended.] That so much of an Act to amend an Act entitled "An Act to amend an Act entitled 'An Act to regulate commerce,' approved February fourth, eighteen hundred and eighty-seven, and all Acts amendatory thereof, and to enlarge the powers of the Interstate Commerce Commission," approved March fourth, nineteen hundred and fifteen, as reads as follows, to wit:

"Provided, however, That if the goods are hidden from view by wrapping, boxing, or other means, and the carrier is not notified as to the character of the goods, the carrier may require the shipper to specifically state in writing the value of the goods, and the carrier shall not be liable beyond the amount so specifically stated, in which case the Interstate Commerce

Commission may establish and maintain rates for transportation, dependent upon the value of the property shipped as specifically stated in writing by the shipper. Such rates shall be published as are other rate schedules,"

be, and the same is hereby, amended to read as follows, to wit:

"*Provided, however,* That the provisions hereof respecting liability for full actual loss, damage, or injury, notwithstanding any limitation of liability or recovery or representation or agreement or release as to value, and declaring any such limitation to be unlawful and void, shall not apply, first, to baggage carried on passenger trains or boats, or trains or boats carrying passengers; second, to property, except ordinary live stock, received for transportation concerning which the carrier shall have been or shall hereafter be expressly authorized or required by order of the Interstate Commerce Commission to establish and maintain rates dependent upon the value declared in writing by the shipper or agreed upon in writing as the released value of the property, in which case such declaration or agreement shall have no other effect than to limit liability and recovery to an amount not exceeding the value so declared or released, and shall not, so far as relates to values, be held to be a violation of section ten of this Act to regulate commerce, as amended; and any tariff schedule which may be filed with the commission pursuant to such order shall contain specific reference thereto and may establish rates varying with the value so declared or agreed upon; and the commission is hereby empowered to make such order in cases where rates dependent upon and varying with declared or agreed values would, in its opinion, be just and reasonable under the circumstances and conditions surrounding the transportation. The term 'ordinary live stock' shall include all cattle, swine, sheep, goats, horses, and mules, except such as are chiefly valuable for breeding, racing, show purposes, or other special uses." [39 Stat. L. 441.]

For the Act of March 4, 1915, ch. 176, hereby amended, see 1916 Supp. Fed. Stat. Ann. 124. This Act, incorporated in the Act of which it was amendatory, is given as section 20K in 4 Fed. Stat. Ann. (2d ed.) 506.

[Transportation of troops and material of war — precedence given — Interstate Commerce Act, sec. 6 amended.] * * * Section six of an Act entitled "An Act to regulate commerce," approved February fourth, eighteen hundred and eighty-seven, as amended March second, eighteen hundred and eighty-nine, and June twenty-ninth, nineteen hundred and six, which reads:

"That in time of war or threatened war preference and precedence shall, upon demand of the President of the United States, be given over all other traffic for the transportation of troops and material of war, and carriers shall adopt every means within their control to facilitate and expedite the military traffic,"

be amended to read as follows:

"That in time of war or threatened war preference and precedence shall upon demand of the President of the United States, be given over all other traffic for the transportation of troops and material of war, and carriers

shall adopt every means within their control to facilitate and expedite the military traffic. And in time of peace shipments consigned to agents of the United States for its use shall be delivered by the carriers as promptly as possible and without regard to any embargo that may have been declared, and no such embargo shall apply to shipments so consigned." [339 Stat. L. 604.]

This is from the Naval Appropriation Act of Aug. 29, 1916, ch. 417.

For the Act of Feb. 4, 1887, ch. 104, § 6, as amended by the Act of June 29, 1906, ch. 3591, amended by this Act, see 1909 Supp. Fed. Stat. Ann. 260; 4 Fed. Stat. Ann. (2d ed.) 406.

An Act To amend an Act entitled "An Act to regulate commerce," as amended, in respect of car service, and for other purposes.

[*Act of May 29, 1917, ch. —, — Stat. L. —.*]

["Car service"—meaning of term—rules and regulations—promulgation—suspension by commission—Interstate Commerce Act, sec. 1 amended.] That section one of the Act entitled "An Act to regulate commerce," approved February twenty-fourth, eighteen hundred and eighty-seven, as heretofore amended, is further amended by adding thereto the following:

The term "car service" as used in this Act shall include the movement, distribution, exchange, interchange, and return of cars used in the transportation of property by any carrier subject to the provisions of this Act.

It shall be the duty of every such carrier to establish, observe, and enforce just and reasonable rules, regulations, and practices with respect to car service, and every unjust and unreasonable rule, regulation, and practice with respect to car service is prohibited and declared to be unlawful.

The Interstate Commerce Commission is hereby authorized by general or special orders to require all carriers subject to the provisions of the Act, or any of them, to file with it from time to time their rules and regulations with respect to car service, and the commission may, in its discretion, direct that the said rules and regulations shall be incorporated in their schedules showing rates, fares, and charges for transportation and be subject to any or all of the provisions of the Act relating thereto.

The commission shall, after hearing, on the complaint or upon its own initiative without complaint, establish reasonable rules, regulations, and practices with respect to car service, including the classification of cars, compensation to be paid for the use of any car not owned by any such common carrier and the penalties or other sanctions for nonobservance of such rules.

Whenever the commission shall be of opinion that necessity exists for immediate action with respect to the supply or use of cars for transportation of property, the commission shall have, and it is hereby given, authority, either upon complaint or upon its own initiative without complaint, at once, if it so orders, without answer or other formal pleading by the interested carrier or carriers, and with or without notice, hearing, or the making or filing of a report, according as the commission may determine, to suspend the operation of any or all rules, regulations, or practices then established

with respect to car service for such time as may be determined by the commission, and also authority to make such just and reasonable directions with respect to car service during such time as in its opinion will best promote car service in the interest of the public and the commerce of the people.

The directions of the commission as to car service may be made through and by such agents or agencies as the commission shall designate and appoint for that purpose.

In case of failure or refusal on the part of any carrier, receiver, or trustee to comply with any direction or order with respect to car service, such carrier, receiver, or trustee shall be liable to a penalty of not less than \$100 nor more than \$500 for each such offense and \$50 for each and every day of the continuance of such offense, which shall accrue to the United States and may be recovered in a civil action brought by the United States. [— *Stat. L.* —.]

For the Act of Feb. 4, 1887, ch. 104, § 1, as originally enacted, see 3 Fed. Stat. Ann. 809; and as subsequently amended, see 4 Fed. Stat. Ann. (2d ed.) 337.

An Act To amend the Act to regulate commerce, as amended, and for other purposes.

[*Act of August 9, 1917, ch. —, — Stat. L. —.*]

[SEC. 1.] [Membership of Commission—salary—term of office—Interstate Commerce Act, sec. 24 amended.] That section twenty-four of an Act entitled “An Act to regulate commerce,” approved February fourth, eighteen hundred and eighty-seven, as amended, be further amended to read as follows:

“SEC. 24. That the Interstate Commerce Commission is hereby enlarged so as to consist of nine members, with terms of seven years, and each shall receive \$10,000 compensation annually. The qualifications of the members and the manner of the payment of their salaries shall be as already provided by law. Such enlargement of the commission shall be accomplished through appointment by the President, by and with the advice and consent of the Senate, of two additional Interstate Commerce Commissioners, one for a term expiring December thirty-first, nineteen hundred and twenty-one, and one for a term expiring December thirty-first, nineteen hundred and twenty-two. The terms of the present commissioners or of any successor appointed to fill a vacancy caused by the death or resignation of any of the present commissioners, shall expire as heretofore provided by law. Their successors and the successors of the additional commissioners herein provided for shall be appointed for the full term of seven years, except that any person appointed to fill a vacancy shall be appointed only for the unexpired term of the commissioner whom he shall succeed. Not more than five commissioners shall be appointed from the same political party.” [— *Stat. L.* —.]

For the Act of Feb. 4, 1887, ch. 104, § 24, as originally enacted, see 3 Fed. Stat. Ann. 852; and as subsequently amended, see 4 Fed. Stat. Ann. (2d ed.) 544.

SEC. 2. [Proceedings of Commission—conduct—seal, oaths and subpoenas—quorum—divisions—salary of secretary—Interstate Com-

merce Act, sec. 17 amended.] That section seventeen of said Act, as amended, be further amended to read as follows:

"SEC. 17. That the commission may conduct its proceedings in such manner as will best conduce to the proper dispatch of business and to the ends of justice. The commission shall have an official seal, which shall be judicially noticed. Any member of the commission may administer oaths and affirmations and sign subpoenas. A majority of the commission shall constitute a quorum for the transaction of business, except as may be otherwise herein provided, but no commissioner shall participate in any hearing or proceeding in which he has any pecuniary interest. The commission may, from time to time, make or amend such general rules or orders as may be requisite for the order and regulation of proceedings before it, or before any division of the commission, including forms of notices and the service thereof, which shall conform, as nearly as may be, to those in use in the courts of the United States. Any party may appear before the commission or any division thereof and be heard in person or by attorney. Every vote and official act of the commission, or of any division thereof, shall be entered of record, and its proceedings shall be public upon the request of any party interested.

"The commission is hereby authorized by its order to divide the members thereof into as many divisions as it may deem necessary, which may be changed from time to time. Such divisions shall be denominated, respectively, division one, division two, and so forth. Any commissioner may be assigned to and may serve upon such division or divisions as the commission may direct, and the senior in service of the commissioners constituting any of said divisions shall act as chairman thereof. In case of vacancy in any division, or of absence or inability to serve thereon of any commissioner thereto assigned, the chairman of the commission, or any commissioner designated by him for that purpose, may temporarily serve on said division until the commission shall otherwise order.

"The commission may by order direct that any of its work, business, or functions arising under this Act, or under any Act amendatory thereof, or supplemental thereto, or under any amendment which may be made to any of said Acts, or under any other Act or joint resolution which has been or may hereafter be approved, or in respect of any matter which has been or may be referred to the commission by Congress or by either branch thereof, be assigned or referred to any of said divisions for action thereon, and may by order at any time amend, modify, supplement, or rescind any such direction. All such orders shall take effect forthwith and remain in effect until otherwise ordered by the commission.

"In conformity with the subject to the order or orders of the commission in the premises, each division so constituted shall have power and authority by a majority thereof to hear and determine, order, certify, report, or otherwise act as to any of said work, business, or functions so assigned or referred to it for action by the Commission, and in respect thereof the division shall have all the jurisdiction and powers now or then conferred by law upon the commission, and be subject to the same duties and obligations. Any order, decision, or report made or other action taken by any of said divisions in respect of any matters so assigned or referred to it shall have the same force and effect, and may be made, evidenced, and

enforced in the same manner as if made, or taken by the commission, subject to rehearing by the commission, as provided in section sixteen-a hereof for rehearing cases decided by the commission. The secretary and seal of the commission shall be the secretary and seal of each division thereof.

"In all proceedings before any such divisions relating to the reasonableness of rates or to alleged discriminations not less than three members shall participate in the consideration and decision; and in all proceedings relating to the valuation of railway property under the Act entitled 'An Act to amend an Act entitled "An Act to regulate commerce," approved February fourth, eighteen hundred and eighty-seven, and all Acts amendatory thereof. by providing for a valuation of the several classes of property of carriers subject thereto and securing information concerning their stocks, bonds, and other securities,' approved March first, nineteen hundred and thirteen, not less than five members shall participate in the consideration and decision.

"The salary of the secretary of the commission shall be \$5,000 per annum.

"Nothing in this section contained, or done pursuant thereto, shall be deemed to divest the commission of any of its powers." [*— Stat. L. —.*]

For the Act of Feb. 4, 1887, ch. 104, § 17, amended by this section, see 3 Fed. Stat. Ann. 849; 4 Fed. Stat. Ann. (2d ed.) 493.

For the Act of March 1, 1913, ch. 92, mentioned in this section, see 1914 Supp. Fed. Stat. Ann. 204. This Act has been incorporated in the Act of which it was amendatory as section 19a, and is given in 4 Fed. Stat. Ann. (2d ed.) 495.

SEC. 3. [Salary of secretary — Interstate Commerce Act, sec. 18, in part repealed.] So much of section eighteen of the Act to regulate commerce as fixes the salary of the secretary of the commission is hereby repealed. [*— Stat. L. —.*]

For the Act of Feb. 4, 1887, ch. 104, § 18, in part repealed by this section, see 3 Fed. Stat. Ann. 849; 4 Fed. Stat. Ann. (2d ed.) 494.

SEC. 4. [New rates, classifications, etc.— filing — Interstate Commerce Act, sec. 15, par. 2, amended.] That paragraph two, section fifteen, of the Act to regulate commerce approved February fourth, eighteen hundred and eighty-seven, as amended, be further amended by adding the following: "*Provided further.* until January first, nineteen hundred and twenty, no increased rate, fare, charge, or classification shall be filed except after approval thereof has been secured from the commission. Such approval may, in the discretion of the commission, be given without formal hearing, and in such case shall not affect any subsequent proceeding relative to such rate, fare, charge, or classification." [*— Stat. L.—.*]

For the Act of Feb. 4, 1887, ch. 104, § 15, par. 2, see 1912 Supp. Fed. Stat. Ann. 120; 4 Fed. Stat. Ann. (2d ed.) 468.

An Act To amend the Act to regulate commerce, as amended, and for other purposes.

[*Act of August 10, 1917, ch —, —Stat. L.—.*]

[Obstruction of interstate or foreign commerce during war — penalty — use of armed forces by President — preference as to shipments

—**Interstate Commerce Act, sec. 1, amended.]** That section one of the act entitled “An Act to regulate commerce,” approved February fourth, eighteen hundred and eighty-seven, as heretofore amended, be further amended by adding thereto the following:

“That on and after the approval of this Act any person or persons who shall, during the war in which the United States is now engaged, knowingly and willfully, by physical force or intimidation by threats of physical force obstruct or retard, or aid in obstructing or retarding, the orderly conduct or movement in the United States of interstate or foreign commerce, or the orderly make-up or movement or disposition of any train, or the movement or disposition of any locomotive, car, or other vehicle on any railroad or elsewhere in the United States engaged in interstate or foreign commerce shall be deemed guilty of a misdemeanor, and for each offense shall be punishable by a fine of not exceeding \$100 or by imprisonment for not exceeding six months, or by both such fine and imprisonment; and the President of the United States is hereby authorized, whenever in his judgment the public interest requires, to employ the armed forces of the United States to prevent any such obstruction or retardation of the passage of the mail, or of the orderly conduct or movement of interstate or foreign commerce in any part of the United States, or of any train, locomotive, car, or other vehicle upon any railroad or elsewhere in the United States engaged in interstate or foreign commerce: *Provided*, That nothing in this action shall be construed to repeal, modify, or affect either section six or section twenty of an Act entitled ‘An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes,’ approved October fifteenth, nineteen hundred and fourteen.

“That during the continuance of the war in which the United States is now engaged the President is authorized, if he finds it necessary for the national defense and security, to direct that such traffic or such shipments of commodities as, in his judgment, may be essential to the national defense and security shall have preference or priority in transportation by any common carrier by railroad, water, or otherwise. He may give these directions at and for such times as he may determine, and may modify, change, suspend, or annul them, and for any such purpose he is hereby authorized to issue orders direct, or through such person or persons as he may designate for the purpose or through the Interstate Commerce Commission. Officials of the United States, when so designated, shall receive no compensation for their services rendered hereunder. Persons not in the employ of the United States so designated shall receive such compensation as the President may fix. Suitable offices may be rented and all necessary expenses, including compensation of persons so designated, shall be paid as directed by the President out of funds which may have been or may be provided to meet expenditures for the national security and defense. The common carriers subject to the Act to regulate commerce or as many of them as desire so to do are hereby authorized without responsibility or liability on the part of the United States, financial or otherwise, to establish and maintain in the city of Washington during the period of the war an agency empowered by such carriers as join in the arrangement to receive on behalf of them all notice and service of such orders and directions as may be issued in accordance with this Act, and service upon such agency shall be

good service as to all the carriers joining in the establishment thereof. And it shall be the duty of any and all the officers, agents, or employees of such carriers by railroad or water or otherwise to obey strictly and conform promptly to such orders, and failure knowingly and willfully to comply therewith, or to do or perform whatever is necessary to the prompt execution of such order, shall render such officers, agents, or employees guilty of a misdemeanor, and any such officer, agent or employee shall upon conviction, be fined not more than \$5,000, or imprisoned not more than one year, or both, in the discretion of the court. For the transportation of persons or property in carrying out the order and directions of the President, just and reasonable rates shall be fixed by the Interstate Commerce Commission; and if the transportation be for the Government of the United States, it shall be paid for currently or monthly by the Secretary of the Treasury out of any funds not otherwise appropriated. Any carrier complying with any such order or direction for preference or priority herein authorized shall be exempt from any and all provisions in existing law imposing civil or criminal pains, penalties, obligations, or liabilities upon carriers by reason of giving preference or priority in compliance with such order or direction." [—*Stat. L.*—]

For the Act of Feb. 4, 1887, ch. 104, § 1, see 3 Fed. Stat. Ann. 809; 4 Fed. Stat. Ann. (2d ed.) 337.

For the Act of Oct. 15, 1914, ch. 323, mentioned in this Act, see 1916 Supp. Fed. Stat. Ann. 267, 9 Fed. Stat. Ann. (2d ed.) 730.

INTOXICATING LIQUORS

Act of March 3, 1917, ch. 162, 394.

Sec. 5. Liquor Advertisements — Prohibition in Mail — Interstate Shipments of Liquors — Dry Territory, 394.

Act of Oct. 3, 1917, ch. —, 396.

Sec. 1110. Liquor Advertisements — Prohibition in Mail — Interstate Shipments of Liquor — Dry Territory — Construction of Former Act, 396.

CROSS-REFERENCES

Sale Prohibited in Alaska, see ALASKA.

Importation Prohibited, see FOOD AND FUEL; INTERNAL REVENUE.

Sale Prohibited in Hawaii, see HAWAIIAN ISLANDS.

Sale Prohibited in Indian Country, see INDIANS.

Exportation, see INTERNAL REVENUE.

Tax on, see INTERNAL REVENUE.

Sale to Officers and Men of Navy Prohibited, see NAVY.

Sale Prohibited in Porto Rico, see PORTO RICO.

Sale to Officers and Men of Army Prohibited, see WAR DEPARTMENT AND MILITARY ESTABLISHMENT.

SEC. 5. [Liquor advertisements — prohibition in mail — interstate shipments of liquors — dry territory.] That no letter, postal card, circular, newspaper, pamphlet, or publication of any kind containing any advertise-

ment of spirituous, vinous, malted, fermented, or other intoxicating liquors of any kind, or containing a solicitation of an order or orders for said liquors, or any of them, shall be deposited in or carried by the mails of the United States, or be delivered by any postmaster or letter carrier, when addressed or directed to any person, firm, corporation, or association, or other addressee, at any place or point in any State or Territory of the United States at which it is by the law in force in the State or Territory at that time unlawful to advertise or solicit orders for such liquors, or any of them, respectively.

If the publisher of any newspaper or other publication or the agent of such publisher, or if any dealer in such liquors or his agent, shall knowingly deposit or cause to be deposited, or shall knowingly send or cause to be sent, anything to be conveyed or delivered by mail in violation of the provisions of this section, or shall knowingly deliver or cause to be delivered by mail anything herein forbidden to be carried by mail, shall be fined not more than \$1,000 or imprisoned not more than six months, or both; and for any subsequent offense shall be imprisoned not more than one year. Any person violating any provision of this section may be tried and punished, either in the district in which the unlawful matter or publication was mailed or to which it was carried by mail for delivery, according to direction thereon, or in which it was caused to be delivered by mail to the person to whom it was addressed. Whoever shall order, purchase, or cause intoxicating liquors to be transported in interstate commerce, except for scientific, sacramental, medicinal, and mechanical purposes, into any State or Territory the laws of which State or Territory prohibit the manufacture or sale therein of intoxicating liquors for beverage purposes shall be punished as aforesaid: *Provided*, That nothing herein shall authorize the shipment of liquor into any State contrary to the laws of such State: *Provided further*, That the Postmaster General is hereby authorized and directed to make public from time to time in suitable bulletins or public notices the names of States in which it is unlawful to advertise or solicit orders for such liquors. [39 Stat. L. 1069.]

This is from the Postal Service Appropriation Act of March 3, 1917, ch. 162, and is known as the "Reed Amendment."

By a joint resolution of March 4, 1917, ch. 192, 39 Stat. L. 1202, it was provided that the provisions of this section should not be in effect until July 1, 1917.

This section was construed by the Act of Oct. 3, 1917, ch. —, § 1110, given in the following paragraph of the text.

Interstate carriers are affected by this act and violate its provisions if they ship intoxicating liquors into a state for the personal use of the consignee provided a law of the state prohibits the personal use of liquors therein. *McAdams v. Wells, Fargo & Co.* 249 Fed. 175.

"Commerce" as used in this paragraph is not synonymous with "transportation" and where an owner transports his own liquor personally from one state to another, not for purposes of trade, he is not engaging in commerce and the statute does not apply. *U. S. v. Mitchell*, 245 Fed. 601.

"Cause . . . to be transported."—In *Ex p. Westbrook*, 250 Fed. 636, the petitioners were before the court on writs of habeas corpus and the court said:

"This case is to be decided upon the following facts appearing from the evidence before the commissioner: Liquor was procured from a dealer in Jacksonville, loaded into an automobile, and started on its way to Albany, Ga. the automobile being driven by one of the defendants: the other residing with him and admitting the ownership of the liquor to be in his father. After having proceeded about a mile and a half, the arrest was made. The petitioners claim that here was an attempt only, and not the consummated crime charged in the affidavit. The government claims that it was a consummated violation of the Reed and Jones amendment to the Post Office Appropriation Bill of 1917. . . . This act seems to punish whoever shall 'order'

intoxicating liquors to be transported in interstate commerce, or whoever shall 'purchase' such liquors for that purpose, or whoever shall 'cause' such liquors to be so transported. Now, if transportation by automobile from one state to another is in interstate commerce, and this seems to be the law, then the testimony before the commissioner was sufficient to

hold the defendants on one, if not all, the prohibitions contained in the act. If they did not order or purchase, they were causing the transportation of the liquor at the time of their arrest. This matter was before the commissioner, who is only required to find probable cause from the evidence, and I think the evidence fully sustains this finding."

SEC. 1110. [Liquor advertisements — prohibition in mail — interstate shipments of liquor — dry territory — construction of former Act.] That section five of the Act approved March third, nineteen hundred and seventeen, entitled "An Act making appropriations for the Post Office Department for the year ending June thirtieth, nineteen hundred and eighteen," shall not be construed to apply to ethyl alcohol for governmental, scientific, medicinal, mechanical, manufacturing, and industrial purposes, and the Postmaster General shall prescribe suitable rules and regulations to carry into effect this section in connection with the Act of which it is amendatory, nor shall said section be held to prohibit the use of the mails by regularly ordained ministers of religion, or by officers of regularly established churches, for ordering wines for sacramental uses, or by manufacturers and dealers for quoting and billing such wines for such purposes only. [— *Stat. L.* —.]

This is from the Act of Oct. 3, 1917, ch. —, entitled "An Act To provide revenue to defray war expenses and for other purposes."

The Act of March 3, 1917, ch. 162, § 5, construed by this section, is given in the preceding paragraph of the text.

IRRIGATION

See **WATERS**

JUDGMENTS

Act of Aug. 23, 1916, ch. 397, 396.

Sec. 1. Docketing in State Court — Repeal of Statute, 396.

2. Act When Effective, 397.

An Act To repeal an Act approved March second, eighteen hundred and ninety-five, entitled "An Act to amend section three of An Act entitled 'An Act to regulate the liens of judgments and decrees of the courts of the United States,' approved August first, eighteen hundred and eighty-eight."

[*Act of Aug. 23, 1916, ch. 397, 39 Stat. L. 531.*]

SEC. 1. [Docketing in state court — repeal of statute.] That an Act approved March second, eighteen hundred and ninety-five, entitled "An

Act to amend section three of an Act entitled 'An Act to regulate the liens of judgments and decrees of the courts of the United States,' approved August first, eighteen hundred and eighty-eight," be, and the same is hereby, repealed. [39 Stat. L. 531.]

For the Act of March 2, 1895, ch. 180, 28 Stat. L. 814, repealed by the text, see 4 Fed. Stat. Ann. 6; 4 Fed. Stat. Ann. (2d ed.) 608 note.

SEC. 2. [Act when effective.] That this Act shall take effect on and after January first, nineteen hundred and seventeen. [39 Stat. L. 531.]

JUDICIAL DISTRICTS

See JUDICIARY

JUDICIAL OFFICERS

Act of June 12, 1917, ch. —, 397.

Sec. 1. *Compensation and Fees — Clerks of District Courts — Marshals,* 397.

Act of April 15, 1918, ch. —, 397.

United States Court for China — Expenses of Court and District Attorney, 397.

Act of June 13, 1918, ch. —, 398.

Marshal for Western District of Michigan — Salary, 398.

Act of July 1, 1918, ch. —, 398.

Sec. 1. *Marshals and Deputy Marshals — Per Diem,* 398.

Assistant District Attorneys — Compensation, 398.

Clerks of Courts — Renewal of Bonds, 398.

Criers — Attendance of Juries — Vacation, 398.

CROSS-REFERENCE

Issuance of Search Warrants, see CRIMINAL LAW.

SEC. 1. [Compensation and fees — clerks of district courts — marshals.] * * * That for the calendar year nineteen hundred and seventeen, and thereafter, the maximum personal compensation of clerks of the United States district courts shall in no case exceed \$3,500 per annum, and that single fees only shall be charged by United States marshals and clerks of the United States district courts against the United States and against private litigants in every judicial district. [— Stat. L. —.]

This is from the Sundry Civil Appropriation Act of June 12, 1917, ch. —.

[United States court for China — expenses of court and district attorney.] * * * The judge of the said court and the district attorney shall, when the sessions of the court are held at other cities than Shanghai,

receive in addition to their salaries their necessary actual expenses during such sessions, not to exceed \$5 per day each, and so much as may be necessary for said purposes during the fiscal year ending June thirtieth, nineteen hundred and nineteen, is hereby appropriated. [— *Stat. L.*—.]

This is from the Diplomatic and Consular Service Appropriation Act of April 15, 1918, ch. —, following an appropriation for the United States Court for China. Similar provisions have appeared in like Acts for preceding years.

An Act To increase the salary of the United States marshal for the western district of Michigan.

[*Act of June 13, 1918, ch. —, — Stat. L. —.*]

[**Marshal for western district of Michigan—salary.**] That from and after the passage of this Act the salary of the United States marshal for the western district of Michigan shall be at the rate of \$4,000 a year. [— *Stat. L.*—.]

[**SEC. 1.**] [**Marshals and deputy marshals—per diem.**] * * * That marshals and office deputy marshals (except in the district of Alaska) may be granted a per diem of not to exceed \$4 and \$3, respectively, in lieu of subsistence, instead of, but under the conditions prescribed for, the present allowance for actual expenses of subsistence.

This and the three paragraphs of the text following are from the Sundry Civil Appropriation Act of July 1, 1918, ch. —.

[**Assistant district attorneys—compensation.**] * * * That except as otherwise prescribed by law the compensation of such of the assistant district attorneys authorized by section eight of the Act approved May twenty-eighth, eighteen hundred and ninety-six, as the Attorney General may deem necessary, may be fixed at not exceeding \$3,000 per annum. [— *Stat. L.*—.]

For the Act of May 28, 1896, ch. 252, § 8, mentioned in the text, see 4 Fed. Stat. Ann. 71; 4 Fed. Stat. Ann. (2d ed.) 622.

[**Clerks of court—renewal of bonds.**] * * * That the Attorney General is authorized to require the official bonds of clerks of United States courts to be renewed every four years, and to fix the amounts of such bonds within statutory limits. Failure to take such action shall not affect the liability under such bonds, but upon failure or refusal of any clerk to execute such new bond or bonds his office shall be deemed vacant by order of the President and so declared by the district attorney in open court. [— *Stat. L.*—.]

[**Criers—attendance of juries—vacation.**] * * * That all persons employed under section seven hundred and fifteen of the Revised Statutes shall be deemed to be in actual attendance when they attend upon the

order of the courts: *Provided further*, That no such persons shall be employed during vacation. [— *Stat. L.* —.]

For R. S. sec. 715, mentioned in the text, see 4 Fed. Stat. Ann. 81; 4 Fed. Stat. Ann. (2d ed.) 635.

Provisions identical with those of this paragraph have appeared in like Acts for preceding years.

JUDICIARY

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Costs by Seamen, see COSTS.

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I. THE JUDICIAL CODE — AMENDMENTS

An Act To amend sections twenty-four and two hundred and fifty-six of the Judicial Code, relating to the jurisdiction of the district courts, so as to save to claimants the rights and remedies under the workmen's compensation law of any State.

[Act of Oct. 6, 1917, ch. —, — Stat. L. —.]

[SEC. 1.] [District courts — jurisdiction in what cases — Judicial Code, sec. 24, cl. 3 amended.] That clause three of section twenty-four of the Judicial Code is hereby amended to read as follows:

“Third. Of all civil causes of admiralty and maritime jurisdiction, saving to suitors in all cases the right of a common-law remedy where the common law is competent to give it, and to claimants the rights and remedies under the workmen's compensation law of any State; of all seizures on land or waters not within admiralty and maritime jurisdiction; of all prizes brought into the United States; and of all proceedings for the condemnation of property taken as prize.” [—Stat. L.—.]

For Judicial Code, § 24, clause 3, amended by this Act, see 1912 Supp. Fed. Stat. Ann. 139; 4 Fed. Stat. Ann. (2d ed.) 839, 1005.

Section 2 of this Act amending Judicial Code, § 256, is given *infra*, p. 414.

An Act To amend section thirty-three of an Act to codify, revise, and amend the laws relating to the judiciary, approved March third, nineteen hundred and eleven.

[Act of Aug. 23, 1916, ch. 399, 39 Stat. L. 532.]

[Suits and prosecutions against revenue officers, etc.— Judicial Code, sec. 33 amended.] That section thirty-three of an Act to codify, revise, and amend the laws relating to the judiciary, approved March third, nineteen hundred and eleven, be, and the same is hereby, amended to read as follows:

“SEC. 33. That when any civil suit or criminal prosecution is commenced in any court of a State against any officer appointed under or acting by authority of any revenue law of the United States now or hereafter enacted, or against any person acting under or by authority of any such officer, on account of any act done under color of his office or of any such law, or on

account of any right, title, or authority claimed by such officer or other person under any such law, or is commenced against any person holding property or estate by title derived from any such officer and affects the validity of any such revenue law, or against any officer of the courts of the United States for or on account of any act done under color of his office or in the performance of his duties as such officer, or when any civil suit or criminal prosecution is commenced against any person for or on account of anything done by him while an officer of either House of Congress in the discharge of his official duty in executing any order of such House, the said suit or prosecution may at any time before the trial or final hearing thereof be removed for trial into the district court next to be holden in the district where the same is pending upon the petition of such defendant to said district court and in the following manner: Said petitions shall set forth the nature of the suit or prosecution and be verified by affidavit and, together with a certificate signed by an attorney or counselor at law of some court of record of the State where such suit or prosecution is commenced or of the United States stating that, as counsel for the petitioner, he has examined the proceedings against him and carefully inquired into all the matters set forth in the petition, and that he believes them to be true, shall be presented to the said district court, if in session, or if it be not, to the clerk thereof at his office, and shall be filed in said office. The cause shall thereupon be entered on the docket of the district court and shall proceed as a cause originally commenced in that court; but all bail and other security given upon such suit or prosecution shall continue in like force and effect as if the same had proceeded to final judgment and execution in the State court. When the suit is commenced in the State court by summons, subpoena, petition, or any other process except *capias*, the clerk of the district court shall issue a writ of *certiorari* to the State court requiring it to send to the district court the record and the proceedings in the cause. When it is commenced by *capias* or by any other similar form of proceeding by which a personal arrest is ordered, he shall issue a writ of *habeas corpus cum causa*, a duplicate of which shall be delivered to the clerk of the State court or left at his office by the marshal of the district or his deputy or by some other person duly authorized thereto; and thereupon it shall be the duty of the State court to stay all further proceedings in the cause, and the suit or prosecution, upon delivery of such process, or leaving the same as aforesaid, shall be held to be removed to the district court, and any further proceedings, trial, or judgment therein in the State court, shall be void. If the defendant in the suit or prosecution be in actual custody on mesne process therein, it shall be the duty of the marshal, by virtue of the writ of *habeas corpus cum causa*, to take the body of the defendant into his custody, to be dealt with in the cause according to law and the order of the district court, or, in vacation, of any judge thereof; and if, upon the removal of such suit or prosecution, it is made to appear to the district court that no copy of the record and proceedings therein in the State court can be obtained, the district court may allow and require the plaintiff to proceed *de novo* and to file a declaration of his cause of action, and the parties may thereupon proceed as in actions originally brought in said district court. On

failure of the plaintiff so to proceed, judgment of non prosequitur may be rendered against him, with costs for the defendant. [39 Stat. L. 532.]

For Judicial Code, § 33, amended by this Act, see 1912 Supp. Fed. Stat. Ann. 148; 5 Fed. Stat. Ann. (2d ed.) 380.

Any civil suit or criminal prosecution commenced in the court of any state against any officer, soldier, or other person in the military service of the United States on account of any act done under color of his office or status or in respect to which he claims any right, title or authority under any law of the United States respecting the military forces thereof, or under the laws of war, may at any time before the trial or final hearing thereof be removed to the District Court of the United States in the district where the same is pending in the manner prescribed by this section, and said court shall have power to hear and determine the cause, by virtue of Article of War 117. See WAR DEPARTMENT AND MILITARY ESTABLISHMENT, *post*.

An Act To amend section seventy two of an Act entitled "An Act to codify, revise, and amend the laws relating to the judiciary," approved March third, nineteen hundred and eleven.

[Act of May 16, 1916, ch. 122, 39 Stat. L. 122.]

[California judicial districts — territory — terms — office of clerk — Judicial Code, sec. 72 amended.] That section seventy-two of the Act entitled "An Act to codify, revise, and amend the laws relating to the judiciary," approved March third, nineteen hundred and eleven, be, and the same is hereby, amended so as to read as follows:

"SEC. 72. The State of California is divided into two districts, to be known as the northern and southern districts of California. The southern district shall include the territory embraced, on the first day of July, nineteen hundred and ten, in the counties of Fresno, Inyo, Kern, Kings, Madera, Mariposa, Merced, and Tulare, which shall constitute the northern division of said district; also the territory embraced, on the date last mentioned, in the counties of Imperial, Los Angeles, Orange, Riverside, San Bernardino, San Diego, San Luis Obispo, Santa Barbara, and Ventura, which shall constitute the southern division of said district. Terms of the district court for the northern division shall be held at Fresno on the first Monday in May and the second Monday in November; and for the southern division, at Los Angeles on the second Monday in January and the second Monday in July, and at San Diego on the second Monday in March and September. The northern district shall include the territory embraced on the first day of July, nineteen hundred and ten, in the counties of Del Norte, Siskiyou, Modoc, Humboldt, Trinity, Shasta, Lassen, Tehama, Plumas, Mendocino, Lake, Colusa, Glenn, Butte, Sierra, Sutter, Yuba, Nevada, Sonoma, Napa, Yolo, Placer, Solano, Sacramento, El Dorado, San Joaquin, Amador, Calaveras, Stanislaus, Tuolumne, Alpine, and Mono, which shall constitute the northern division of said district; also the territory embraced, on the date last mentioned, in the counties of San Francisco, Marin, Contra Costa, Alameda, San Mateo, Santa Clara, Santa Cruz, Monterey, and San Benito, which shall constitute the southern division of said district. Terms of the district court for the northern division of the district shall be held at Sacramento on the second Monday in April and the first Monday in October, and at Eureka on the third Monday in July;

and for the southern division of the northern district, at San Francisco on the first Monday in March, the second Monday in July, and the first Monday in November. The clerk of the district court for the northern district shall maintain an office at Sacramento, in charge of himself or a deputy, which shall be kept open at all times for the transaction of the business of the court." [39 Stat. L. 122.]

For Judicial Code, § 72, amended by this Act, see 1912 Supp. Fed. Stat. Ann. 163; 5 Fed. Stat. Ann. (2d ed.) 555.

An Act To amend section seventy-three of an Act entitled "An Act to codify, revise, and amend the laws relating to the judiciary," approved March third, nineteen hundred and eleven, and for other purposes.

[Act of June 12, 1916, ch. 143, 39 Stat. L. 225.]

[Colorado judicial district — terms — place of holding court — deputy marshal — deputy clerk — Judicial Code, sec. 73 amended.] That section seventy-three of an Act entitled "An Act to codify, revise, and amend the laws relating to the judiciary," approved March third, nineteen hundred and eleven, be, and the same is hereby, amended to read as follows:

"SEC. 73. That the State of Colorado shall constitute one judicial district, to be known as the district of Colorado. Terms of the district court shall be held at Denver on the first Tuesday in May and November; at Pueblo, on the first Tuesday in April; at Grand Junction on the second Tuesday in September; at Montrose on the third Tuesday in September, and at Durango on the fourth Tuesday in September.

"That the Secretary of the Treasury, in constructing the public buildings heretofore authorized to be constructed at the cities of Grand Junction and Durango, be, and he is hereby, authorized and empowered to provide accommodations in each of said buildings for post office, United States court, and other governmental offices, and the existing authorizations for said buildings be and the same are hereby respectively amended accordingly; and the unexpended balance of all appropriations heretofore made for the construction of said buildings and all appropriations which may be provided in any pending legislation, or that hereafter may be made for the construction of said buildings, are hereby made available for the purpose stated in this paragraph: *Provided*, That if at the same time the holding of the terms of said court in any year in either of said cities of Grand Junction and Durango there is no business to be transacted by said court, the term may be adjourned or continued by order of the judge of said court in chambers at Denver, Colorado: *And provided further*, That the marshal and clerk of said court shall each respectively appoint at least one deputy to reside at and who shall maintain an office at each of the four said places where said court is to be held by the terms of this Act." [39 Stat. L. 225.]

For Judicial Code, § 73, amended by this Act, see 1912 Supp. Fed. Stat. Ann. 164; 5 Fed. Stat. Ann. (2d ed.) 557.

An Act To amend section eighty-one of the Act entitled "An Act to codify, revise, and amend the laws relating to the judiciary," approved March third, nineteen hundred and eleven.

[Act of April 27, 1916, ch. 90, 39 Stat. L. 55.]

[Iowa judicial districts — terms — office of clerk — Judicial Code, sec. 81 amended.] That section eighty-one of the Act entitled "An Act to codify, revise, and amend the laws relating to the judiciary," approved March third, nineteen hundred and eleven, be, and it hereby is, amended so as to read as follows:

"**SEC. 81.** The State of Iowa is divided into two judicial districts, to be known as the northern and southern districts of Iowa.

"The northern district shall include the territory embraced on the first day of July, nineteen hundred and ten, in the counties of Allamakee, Dubuque, Buchanan, Clayton, Delaware, Fayette, Winneshiek, Howard, Chickasaw, Bremer, Blackhawk, Floyd, Mitchell, and Jackson, which shall constitute the eastern division of said district; also the territory embraced on the date last mentioned in the counties of Jones, Cedar, Linn, Iowa, Benton, Tama, Grundy, and Hardin, which shall constitute the Cedar Rapids division; also the territory embraced on the date last mentioned in the counties of Emmet, Palo Alto, Pocahontas, Calhoun, Carroll, Kossuth, Humboldt, Webster, Winnebago, Hancock, Wright, Hamilton, Worth, Cerro Gordo, Franklin, and Butler, which shall constitute the central division; also the territory embraced on the date last mentioned in the counties of Dickinson, Clay, Buena Vista, Sac, Osceola, O'Brien, Cherokee, Ida, Lyon, Sioux, Plymouth, Woodbury, and Monona, which shall constitute the western division.

"Terms of the district court for the eastern division shall be held at Dubuque on the fourth Tuesday in April and the first Tuesday in December and at Waterloo on the second Tuesdays in May and September; for the Cedar Rapids division, at Cedar Rapids on the first Tuesday in April and the fourth Tuesday in September; for the central division, at Fort Dodge on the second Tuesdays in June and November; and for the western division, at Sioux City on the fourth Tuesday in May and the third Tuesday in October.

"The southern district shall include the territory embraced on the first day of July, nineteen hundred and ten, in the counties of Louisa, Henry, Des Moines, Lee, and Van Buren, which shall constitute the eastern division of said district; also the territory embraced on the date last mentioned in the counties of Marshall, Story, Boone, Greene, Guthrie, Dallas, Polk, Jasper, Poweshiek, Marion, Warren, and Madison, which shall constitute the central division of said district; also the territory embraced on the date last mentioned in the counties of Crawford, Harrison, Shelby, Audubon, Cass, Pottawattamie, Mills, and Montgomery, which shall constitute the western division of said district; also the territory embraced on the date last mentioned in the counties of Adair, Adams, Clarke, Decatur, Fremont, Lucas, Page, Ringgold, Taylor, Union, and Wayne, which shall constitute the southern division of said district; also the territory embraced on the date last mentioned in the counties of Scott, Muscatine, Washington, Johnson, and Clinton, which shall constitute the Davenport division of said

district; also the territory embraced on the date last mentioned in the counties of Davis, Appanoose, Mahaska, Keokuk, Jefferson, Monroe, and Wapello, which shall constitute the Ottumwa division of said district.

"Terms of the district court for the eastern division shall be held at Keokuk on the sixth Tuesday after the fourth Tuesday in February and the eighth Tuesday after the third Tuesday in September; for the central division, at Des Moines on the tenth Tuesday after the fourth Tuesday in February and the tenth Tuesday after the third Tuesday in September; for the western division, at Council Bluffs on the fourth Tuesday in February and the sixth Tuesday after the third Tuesday in September; for the southern division, at Creston on the fourth Tuesday after the fourth Tuesday in February and the third Tuesday in September; for the Davenport division, at Davenport on the eighth Tuesday after the fourth Tuesday in February and the second Tuesday after the third Tuesday in September; and for the Ottumwa division, at Ottumwa on the second Tuesday after the fourth Tuesday in February and the fourth Tuesday after the Third Tuesday in September.

"The clerk of the court for said district shall maintain an office in charge of himself or a deputy at Davenport and at Ottumwa for the transaction of the business of said divisions." [39 Stat. L. 55.]

For Judicial Code, § 81, amended by this Act, see 1912 Supp. Fed. Stat. Ann. 168; 5 Fed. Stat. Ann. (2d ed.) 563.

This section had been previously amended by the Act of Feb. 23, 1916, ch. 32, 39 Stat. L. 12, entitled "An Act To amend chapter two hundred and thirty-one, known as the Judicial Code, Act of March third, nineteen hundred and eleven, volume thirty-six, United States Statutes at Large, section eighty-one, page eleven hundred and eleven" which read as follows:

"That section eighty-one, Act of March third, nineteen hundred and eleven, known as the Judicial Code, be, and the same is hereby, amended to read as follows:

"The State of Iowa is divided into two judicial districts, to be known as the northern and southern districts of Iowa. The northern district shall include the territory embraced on the first day of July, nineteen hundred and ten, in the counties of Allamakee, Dubuque, Buchanan, Clayton, Delaware, Fayette, Winneshiek, Howard, Chickasaw, Bremer, Blackhawk, Floyd, Mitchell, and Jackson, which shall constitute the eastern division of said district; also the territory embraced on the date last mentioned in the counties of Jones, Cedar, Linn, Johnson, Iowa, Benton, Tama, Grundy, and Hardin, which shall constitute the Cedar Rapids division; also the territory embraced on the date last mentioned in the counties of Emmet, Palo Alto, Pocahontas, Calhoun, Carroll, Kossuth, Humboldt, Webster, Winnebago, Hancock, Wright, Hamilton, Worth, Cerro Gordo, Franklin, and Butler, which shall constitute the central division; also the territory embraced on the date last mentioned in the counties of Dickinson, Clay, Buena Vista, Sac, Osceola, O'Brien, Cherokee, Ida, Lyon, Sioux, Plymouth, Woodbury, and Monona, which shall constitute the western division. Terms of the district court for the eastern division shall be held at Dubuque on the fourth Tuesday in April and the first Tuesday in December, and at Waterloo on the second Tuesday in May and September; for the Cedar Rapids division, at Cedar Rapids on the first Tuesday in April and the fourth Tuesday in September; for the central division, at Fort Dodge on the second Tuesdays in June and November; and for the western division, at Sioux City on the fourth Tuesday in May and the third Tuesday in October. The southern district shall include the territory embraced on the first day of July, nineteen hundred and ten, in the counties of Louisa, Henry, Des Moines, Lee, and Van Buren, which shall constitute the eastern division of said district; also the territory embraced on the date last mentioned in the counties of Marshall, Story, Boone, Greene, Guthrie, Dallas, Polk, Jasper, Poweshiek, Marion, Warren, and Madison, which shall constitute the central division of said district; also the territory embraced on the date last mentioned in the counties of Crawford, Harrison, Shelby, Audubon, Cass, Pottawattamie, Mills, and Montgomery, which shall constitute the western division of said district; also the territory embraced on the date last mentioned in the counties of Adair, Adams, Clarke, Decatur, Fremont, Lucas, Page, Ringgold, Taylor, Union, and Wayne, which shall constitute the southern division of said district; also the

territory embraced on the date last mentioned in the counties of Scott, Muscatine, Washington, and Clinton, which shall constitute the Davenport division of said district; also the territory embraced on the date last mentioned in the counties of Davis, Appanoose, Mahaska, Keokuk, Jefferson, Monroe, and Wapello, which shall constitute the Ottumwa division of said district. Terms of the district court for the eastern division shall be held at Keokuk on the sixth Tuesday after the fourth Tuesday in February and the eighth Tuesday after the third Tuesday in September; for the central division, at Des Moines on the tenth Tuesday after the fourth Tuesday in February and the tenth Tuesday after the third Tuesday in September; for the western division, at Council Bluffs on the fourth Tuesday in February and the sixth Tuesday after the third Tuesday in September; for the southern division, at Creston on the fourth Tuesday after the fourth Tuesday in February and the third Tuesday in September; for the Davenport division, at Davenport on the eighth Tuesday after the fourth Tuesday in February and the second Tuesday after the third Tuesday in September; and for the Ottumwa division, at Ottumwa on the second Tuesday after the fourth Tuesday in February and the fourth Tuesday after the third Tuesday in September. The clerk of the court for said district shall maintain an office in charge of himself or a deputy at Davenport and at Ottumwa for the transaction of the business of said divisions."

An Act To amend section eighty-two, chapter two hundred and thirty-one, of the Act to codify, revise, and amend the laws relating to the judiciary.

[Act of Sept. 6, 1916, ch. 447, 39 Stat. L. 725.]

[Kansas — judicial districts — deputy clerks — deputy marshals — Judicial Code, sec. 82 amended.] That section eighty-two (page eleven hundred and twelve, part one, volume thirty-six, Statutes at Large) of the Act to codify, revise, and amend the laws relating to the judiciary be amended to read as follows:

"SEC. 82. That the State of Kansas shall constitute one judicial district, to be known as the district of Kansas. It is divided into three divisions, to be known as the first, second, and third divisions of the district of Kansas. The first division shall include the territory embraced on the first day of July, nineteen hundred and ten, in the counties of Atchison, Brown, Chase, Cheyenne, Clay, Cloud, Decatur, Dickinson, Doniphan, Douglas, Ellis, Franklin, Geary, Gove, Graham, Jackson, Jefferson, Jewell, Johnson, Leavenworth, Lincoln, Logan, Lyon, Marion, Marshall, Mitchell, Morris, Nemaha, Norton, Osage, Osborne, Ottawa, Phillips, Pottawatomie, Rawlins, Republic, Riley, Rooks, Russell, Saline, Shawnee, Sheridan, Sherman, Smith, Thomas, Trego, Wabaunsee, Wallace, Washington, and Wyandotte. The second division shall include the territory embraced on the date last mentioned in the counties of Barber, Barton, Butler, Clark, Comanche, Cowley, Edwards, Ellsworth, Finney, Ford, Grant, Gray, Greeley, Hamilton, Harper, Harvey, Hodgeman, Haskell, Kingman, Kiowa, Kearny, Lane, McPherson, Morton, Meade, Ness, Pratt, Pawnee, Reno, Rice, Rush, Scott, Sedgwick, Stafford, Stevens, Seward, Sumner, Stanton, and Wichita. The third division shall include the territory embraced on the said date last mentioned in the counties of Allen, Anderson, Bourbon, Cherokee, Coffey, Chautauqua, Crawford, Elk, Greenwood, Labette, Linn, Miami, Montgomery, Neosho, Wilson, and Woodson. Terms of the district court for the first division shall be held at Leavenworth on the second Monday in October; at Topeka on the second Monday in April; at Kansas City on the

second Monday in January and the first Monday in October; and at Salina on the second Monday in May; terms of the district court for the second division shall be held at Wichita on the second Mondays in March and September; and for the third division, at Fort Scott on the first Monday in May and the second Monday in November. The clerk of the district court shall appoint three deputies, one of whom shall reside and keep his office at Fort Scott, one at Wichita, and the other at Salina, and the marshal shall appoint a deputy who shall reside and keep his office at Fort Scott and the marshal shall also appoint a deputy, who shall reside and keep his office at Kansas City." [39 Stat. L. 725.]

For Judicial Code, § 82, amended by this Act, see 1912 Supp. Fed. Stat. Ann. 169; 5 Fed. Stat. Ann. (2d ed.) 565.

An Act To amend section ninety-nine of the Act to codify, revise, and amend the laws relating to the judiciary.

[Act of July 17, 1916, ch. 248, 39 Stat. L. 386.]

[North Dakota judicial districts — Judicial Code, sec. 99 amended.] That section ninety-nine of the Act to codify, revise, and amend the laws relating to the judiciary, be amended to read as follows:

"SEC. 99. That the State of North Dakota shall constitute one judicial district, to be known as the district of North Dakota. The territory embraced on the first day of January, nineteen hundred and sixteen, in the countries of Burleigh, Logan, McIntosh, Emmons, Kidder, McLean, Adams, Bowman, Dunn, Hettinger, Morton, Stark, Golden Valley, Slope, Sioux, Oliver, Mercer, Billings, and McKenzie shall constitute the southwestern division of said district; and the territory embraced on the date last mentioned in the counties of Cass, Richland, Barnes, Sargent, Ransom, and Steele shall constitute the southeastern division; and the territory embraced on the date last mentioned in the counties of Grand Forks, Traill, Walsh, Pembina, Cavalier, and Nelson shall constitute the northeastern; and the territory embraced on the date last mentioned in the counties of Ramsey, Benson, Towner, Rolette, Bottineau, Pierce, and McHenry shall constitute the northwestern division; and the territory embraced on the date last mentioned in the counties of Ward, Williams, Divide, Montrail, Burke, and Renville shall constitute the western division; and the territory embraced on the date last mentioned in the counties of Griggs, Foster, Eddy, Wells, Sheridan, Stutsman, Lamoure; and Dickey shall constitute the central division. The several Indian reservations and parts thereof within said State shall constitute a part of the several divisions within which they are respectively situated. Terms of the district court for the southwestern division shall be held at Bismarck on the first Tuesday in March; for the southeastern division, at Fargo, on the third Tuesday in May; for the northeastern division, at Grand Forks, on the second Tuesday in November; for the northwestern division, at Devils Lake on the first Tuesday in July; for the western division, at Minot on the second Tuesday in October; and for the central division, at Jamestown on the second Tuesday in April. The clerk of the court shall maintain an office in charge of

himself or a deputy at each place at which court is held in his district: *Provided*, That the Government of the United States shall incur no expense for rent, light, heat, water, or janitor service for the building in which court shall be held until such time as the Government may erect its own court room." [39 Stat. L. 386.]

For Judicial Code, § 99, amended by this Act, see 1912 Supp. Fed. Stat. Ann. 179; 5 Fed. Stat. Ann. (2d ed.) 582.

An Act To amend section one hundred and one of the Judicial Code.

[Act of June 13, 1918, ch. —, — Stat. L. —.]

[Oklahoma judicial districts — Judicial Code, sec. 101 amended.] That section one hundred and one of an Act entitled "An Act to codify, revise, and amend the laws relating to the judiciary," approved March third, nineteen hundred and eleven, as amended by the Act approved February twentieth, nineteen hundred and seventeen, be, and the same is hereby, amended so as to read as follows:

"SEC. 101. The State of Oklahoma is divided into two judicial districts, to be known as the eastern and western districts of Oklahoma. The eastern district shall include the territory embraced on the first day of July, nineteen hundred and sixteen, in the counties of Adair, Atoka, Bryan, Craig, Cherokee, Creek, Choctaw, Coal, Carter, Delaware, Garvin, Grady, Haskell, Hughes, Jefferson, Johnston, Latimer, Le Flore, Love, McClain, Mayes, Muskogee, McIntosh, McCurtain, Murray, Marshall, Nowata, Ottawa, Okmulgee, Okfuskee, Pittsburg, Pushmataha, Pontotoc, Rogers, Stephens, Sequoyah, Seminole, Tulsa, Washington, and Wagoner. Terms of the district court for the eastern district shall be held at Muskogee on the first Monday in January, at Vinita on the first Monday in March, at Tulsa on the first Monday in April, at South McAlester on the first Monday in June, at Ardmore on the first Monday in October, and at Chickasha on the first Monday in November of each year. The western district shall include the territory embraced on the first day of July, nineteen hundred and sixteen, in the counties of Alfalfa, Beaver, Beckham, Blaine, Caddo, Canadian, Cimarron, Cleveland, Comanche, Cotton, Custer, Dewey, Ellis, Garfield, Grant, Greer, Harmon, Harper, Jackson, Kay, Kingfisher, Kiowa, Lincoln, Logan, Major, Noble, Oklahoma, Osage, Pawnee, Payne, Pottawatomie, Roger Mills, Texas, Tillman, Washita, Woods, and Woodward. Terms of the district court for the western district shall be held at Oklahoma City on the first Monday in January, at Enid on the first Monday in March, at Guthrie on the first Monday in May, at Lawton on the first Monday in September, and at Woodward on the second Monday in November: *Provided*, That suitable rooms and accommodations for holding court at Woodward are furnished free of expense to the United States. The clerk of the district court for the eastern district shall keep his office at Muskogee and the clerk for the western district at Guthrie, and shall maintain an office in charge of himself or a deputy at Oklahoma City." [— Stat L. —.]

For Judicial Code, § 101, amended by this Act, see 1912 Supp. Fed. Stat. Ann. 181; 5 Fed. Stat. Ann. (2d ed.) 584.

This section had previously been amended by an Act of Feb. 20, 1917, ch. 102, 39

Stat. L. 927, entitled "An Act To amend an Act entitled 'An Act to codify, revise, and amend the laws relating to the judiciary,'" which was as follows:

"That section one hundred and one of the Act entitled 'An Act to codify, revise, and amend the laws relating to the judiciary,' approved March third, nineteen hundred and eleven, be, and the same is hereby, amended to read as follows:

"Sec. 101. The State of Oklahoma is divided into two judicial districts, to be known as the eastern and western districts of Oklahoma. The eastern district shall include the territory embraced on the first day of July, nineteen hundred and sixteen, in the counties of Adair, Atoka, Bryant, Craig, Cherokee, Creek, Choctaw, Coal, Carter, Delaware, Garvin, Grady, Haskell, Hughes, Johnston, Jefferson, Latimer, Le Flore, Love, McClain, Mayes, Muskogee, McIntosh, McCurtain, Murray, Marshall, Nowata, Ottawa, Okmulgee, Okfuskee, Pittsburg, Pushmataha, Pontotoc, Rogers, Stephens, Sequoyah, Seminole, Tulsa, Washington, and Wagoner. Terms of the district court for the eastern district shall be held at Muskogee on the first Monday in January; at Vinita, on the first Monday in March; at Tulsa, on the first Monday in April; at South McAlistar, on the first Monday in June; at Ardmore, on the first Monday in October; and at Chickasha, on the first Monday in November in each year. The western district shall include the territory embraced on the first day of July, nineteen hundred and sixteen, in the counties of Alfalfa, Beaver, Beckham, Blaine, Caddo, Canadian, Cimarron, Cleveland, Comanche, Custer, Dewey, Ellis, Garfield, Grant, Greer, Harmon, Harper, Jackson, Kay, Kingfisher, Kiowa, Lincoln, Logan, Major, Noble, Oklahoma Osage, Pawnee, Payne, Pottawatomie, Roger Mills, Texas, Tillman, Washita, Woods, and Woodward. Terms of the district court for the western district shall be held at Guthrie on the first Monday in January; at Oklahoma City, on the first Monday in March; at Enid, on the first Monday in June; at Lawton, on the first Monday in September; and at Woodward, on the first Monday in November: *Provided*, That suitable rooms and accommodations for holding court at Woodward are furnished free of expense to the United States. The clerk of the district court for the eastern district shall keep his office at Muskogee and the clerk for the western district at Guthrie, and shall maintain an office in charge of himself or a deputy at Oklahoma City."

An Act To amend section one hundred and eleven of the Judicial Code.

[*Act of June 13, 1918, ch. —, — Stat. L. —.*]

[SEC. 1.] [Virginia Judicial Districts—Judicial Code, sec. 111 amended.] That section one hundred and eleven of the Act entitled "An Act to codify, revise, and amend the laws relating to the judiciary," approved March third, nineteen hundred and eleven, be, and the same is hereby, amended so as to read as follows:

"SEC. 111. The State of Virginia is divided into two districts, to be known as the eastern and western districts of Virginia.

"The eastern district shall include the territory embraced on the first day of July, nineteen hundred and ten, in the counties of Accomac, Alexandria, Amelia, Brunswick, Caroline, Charles City, Chesterfield, Culpeper, Dinwiddie, Elizabeth City, Essex, Fairfax, Fauquier, Gloucester, Goochland, Greensville, Hanover, Henrico, Isle of Wight, James City, King and Queen, King George, King William, Lancaster, Loudoun, Louisa, Lunenburg, Mathews, Mecklenburg, Middlesex, Nansemond, New Kent, Norfolk, Northampton, Northumberland, Nottoway, Orange, Powhatan, Prince Edward, Prince George, Prince William, Princess Anne, Richmond, Southampton, Spotsylvania, Stafford, Surry, Sussex, Warwick, Westmoreland, and York.

"Terms of the district court shall be held at Richmond on the first Mondays in April and October; at Norfolk on the first Mondays in May and November; and at Alexandria on the first Mondays in January and July.

"The western district shall include the territory embraced on the first

day of July, nineteen hundred and ten, in the counties of Alleghany, Albemarle, Amherst, Appomattox, Augusta, Bath, Bedford, Bland, Botetourt, Buchanan, Buckingham, Campbell, Carroll, Charlotte, Clarke, Craig, Cumberland, Dickenson, Floyd, Fluvanna, Franklin, Frederick, Giles, Grayson, Greene, Halifax, Henry, Highland, Lee, Madison, Montgomery, Nelson, Page, Patrick, Pulaski, Pittsylvania, Rappahannock, Roanoke, Rockbridge, Rockingham, Russell, Scott, Shenandoah, Smyth, Tazewell, Warren, Washington, Wise, and Wythe.

"Terms of the district court shall be held at Lynchburg on the second Mondays in January and July; at Roanoke on the second Monday in February and the first Monday in August; at Danville on the second Monday in March and the third Monday in September; at Charlottesville on the second Mondays in April and November; at Harrisonburg on the fourth Mondays in April and November; at Big Stone Gap on the third Monday in May and the second Monday in October; and at Abingdon on the second Mondays in June and December.

"The clerk of the court for the western district shall maintain an office in charge of himself or a deputy at Lynchburg, Roanoke, Danville, Charlottesville, Harrisonburg, Big Stone Gap, and Abingdon, which shall be kept open at all times for the transaction of the business of the court." [— *Stat. L.* —.]

For Judicial Code, § 111, amended by this Act, see 1912 Supp. Fed. Stat. Ann. 187; 5 Fed. Stat. Ann. (2d ed.) 594.

SEC. 2. [Time of taking effect of Act.] That this Act shall become effective on July first, nineteen hundred and eighteen.

[**SEC. 1.] [Supreme court — terms — Judicial Code, sec. 230 amended.]** That section two hundred and thirty of an Act to codify, revise, and amend the laws relating to the judiciary, approved March third, nineteen hundred and eleven, known as the Judicial Code, be, and it hereby is, amended so as to read as follows:

"SEC. 230. The Supreme Court shall hold at the seat of government one term annually, commencing on the first Monday in October, and such adjourned or special terms as it may find necessary for the dispatch of business." [39 *Stat. L.* 726.]

The foregoing section 1 and the following section 2 are from an Act of Sept. 6, 1916, ch. 448, entitled "An Act To amend the Judicial Code; to fix the time when the annual terms of the Supreme Court shall commence; and further to define the jurisdiction of that court."

Sections 3-7 of this Act are given, *infra*, p. 420 *et seq.*

For Judicial Code, § 230, amended by this section, see 1912 Supp. Fed. Stat. Ann. 229; 5 Fed. Stat. Ann. (2d ed.) 708.

SEC. 2. [Writs of error from judgments and decrees of state courts — certiorari, etc. — Judicial Code, sec. 237 amended.] That section two hundred and thirty-seven of the Judicial Code, as amended by "An Act to amend an Act entitled 'An Act to codify, revise, and amend the laws relating to the judiciary,' approved March third, nineteen hundred and

eleven," approved December twenty-third, nineteen hundred and fourteen, be, and it hereby is, amended so as to read as follows:

"SEC. 237. A final judgment or decree in any suit in the highest court of a State in which a decision in the suit could be had, where is drawn in question the validity of a treaty or statute of, or an authority exercised under the United States, and the decision is against their validity; or where is drawn in question the validity of a statute of, or an authority exercised under any State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision is in favor of their validity, may be reexamined and reversed or affirmed in the Supreme Court upon a writ of error. The writ shall have the same effect as if the judgment or decree complained of had been rendered or passed in a court of the United States. The Supreme Court may reverse, modify, or affirm the judgment or decree of such State court, and may, in its discretion, award execution or remand the same to the court, from which it was removed by the writ.

"It shall be competent for the Supreme Court, by certiorari or otherwise, to require that there be certified to it for review and determination with the same power and authority and with like effect as if brought up by writ of error, any cause wherein a final judgment or decree has been rendered or passed by the highest court of a State in which a decision could be had, where is drawn in question the validity of a treaty or statute of, or an authority exercised under the United States, and the decision is in favor of their validity; or where is drawn in question the validity of a statute of, or an authority exercised under any State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision is against their validity; or where any title, right, privilege, or immunity is claimed under the Constitution, or any treaty or statute of, or commission held or authority exercised under the United States, and the decision is either in favor of or against the title, right, privilege, or immunity especially set up or claimed, by either party, under such Constitution, treaty, statute, commission, or authority." [39 Stat. L. 726.]

See the note to the preceding section 1 of this Act.

For Judicial Code, § 237, amended by this section, see 1912 Supp. Fed. Stat. Ann. 230; 5 Fed. Stat. Ann. (2d ed.) 723.

- I. In general, 412.
- II. Writ of error 412.
- III. Certiorari, 413.

I. IN GENERAL

"The difference between the two modes of securing a review, as contemplated by the statute, lies in the fact that a writ of error is granted as of right, while a writ of certiorari is granted or refused in the exercise of a sound discretion." Philadelphia, etc., Coal, etc., Co. v. Gilbert, (1917) 245 U. S. 162, 38 S. Ct. 58, 62 U. S. (L. ed.) —.

II. WRIT OF ERROR

A writ of error must be dismissed, even though the defendant in error does

not object to the jurisdiction, where the judgment of the state court was entered after this act took effect and did not draw in question the validity of any thing described in this section as authorizing review on writ of error. *Northern Pac. R. Co. v. Solum*, (1918) 247 U. S. 477, 38 S. Ct. 550, 62 U. S. (L. ed.) —.

Frivolous federal question.—No substantial federal question which will support the appellate jurisdiction of the federal Supreme Court is involved in the contentions that the enforcement in a state court of the statutory lien of an attorney upon his client's cause of action against the defendant, who, with notice of such lien, satisfied a judgment rendered by a federal District Court in a suit brought by other counsel on the same

cause of action, takes defendant's property and denies the equal protection of the laws, contrary to U. S. Const., 14th Amend., by imposing a liability not imposed by the federal court judgment, deprives defendant of the protection afforded by congressional legislation to those who pay to the clerks of the federal district courts money in satisfaction of judgments entered therein; and gives to two attorneys liens for the same service. *Union Pac. R. Co. v. Laughlin*, (1918) 247 U. S. 204, 38 S. Ct. 436, 62 U. S. (L. ed.) —, where dismissing a writ of error, the court said: "The Missouri statute simply gives a cause of action against one who, with knowledge of the existence of a lien, deforces it. To grant such a remedy against the wrongdoer clearly does not deprive him of any right guaranteed by the federal Constitution, even if the instrument by means of which the wrong is accomplished happens to be the judgment of a federal court. No substantial federal question is involved. We have no occasion, therefore, to consider whether the validity of the Missouri statute was drawn in question (*Philadelphia & R. Coal & I. Co. v. Gilbert*, 245 U. S. 162, 38 S. Ct. 58, 62 U. S. (L. ed.) —."

Validity of state statute or authority.—In *Ireland v. Woods*, (1918) 246 U. S. 323, 38 S. Ct. 319, 62 U. S. (L. ed.) —, Ireland, who was under arrest by Woods, a police commissioner of New York city, on a warrant of the Governor of New York issued in compliance with a requisition of the Governor of New Jersey and charged as a fugitive from the justice of New Jersey, sued out a writ of habeas corpus alleging that his arrest was illegal and in violation of subdivision 2 of sec. 2. Art. IV of the federal Constitution and of sec. 5276 of the United States Revised Statutes. He did not contend that there was no sufficient showing before the Governor to warrant the exercise of his jurisdiction, and the court did not pass upon or even refer to the allegation that his arrest was in violation of the federal Constitution or statutes, but the writ was dismissed upon consideration of the testimony and consequent rejection of the petitioner's contention that he was not in New Jersey at the time when the indictment charged the commission of the offense. A writ of error from the federal Supreme Court was dismissed.

Validity of authority exercised under state.—The contention in an independent suit to quiet title that to sustain the validity of a prior judicial sale of the real property of a decedent in order to pay his debts would deny the due process of law guaranteed by U. S. Const. 14th Amend., because the state statutory requirement as to time for hearing when service was had by publication was not

observed, does not draw in question the validity of an authority exercised under a state, within the meaning of this provision. *Stadelman v. Miner*, (1918) 246 U. S. 544, 38 S. Ct. 359, 62 U. S. (L. ed.) —, dismissing a writ of error.

An order denying a motion to set aside the service of summons upon the designated agent of a foreign corporation doing business within the state in an action for personal injuries received outside the state, which motion was made on the ground that defendant's consent to be sued in the state by service on such agent was impliedly limited to causes of action arising in connection with business transacted within the state, is not reviewable by writ of error, but by certiorari. *Philadelphia, etc., R. Co. v. Gilbert*, (1917) 245 U. S. 162, 38 S. Ct. 58, 62 U. S. (L. ed.) —, where the court said: "All that was drawn in question by the motion was the validity of the service and the power of the court, consistently with the 1st section of the 14th Amendment,—probably meaning the due process of law clause,—to proceed upon that service to a hearing and determination of the case. It did not question the validity of any treaty or statute of, or authority exercised under, the United States. Neither did it challenge the validity of a statute of, or an authority exercised under, any state, on the ground of its being repugnant to the Constitution, treaties, or laws of the United States. Challenging the power of the court to proceed to a decision of the merits did not draw in question an authority exercised under the state, for, as this court has said, the power to hear and determine cases is not the kind of authority to which the statute refers. *Bethell v. Demaret*, 10 Wall. 537, 540, 19 L. ed. 1007, 1008; *French v. Taylor*, 199 U. S. 274, 277, 50 L. ed. 189, 191, 26 Sup. Ct. Rep. 76. It follows that the judgment cannot be reviewed upon writ of error."

Upon the authority of the foregoing case of *Philadelphia, etc., R. Co. v. Gilbert*, a writ of error to the Supreme Court of Missouri was dismissed for want of jurisdiction in *Cave v. Missouri*, (1918) 246 U. S. 650, 38 S. Ct. 334, 62 U. S. (L. ed.) —.

III. CERTIORARI

Finality of judgment for purpose of certiorari.—In *Bruce v. Tobin*, (1917) 245 U. S. 18, 38 S. Ct. 7, 62 U. S. (L. ed.) —, the administrator of an employee of an interstate railroad company sued under the federal Employers' Liability Act for loss of his intestate's life, and the defendant paid the conceded loss to the plaintiff administrator. A father and mother but no widow or children survived. The father, Tobin, sued the administrator

in a South Dakota court to recover half the amount as his share of the loss. Setting aside the section of the trial court rejecting the claim, but not specifically fixing the amount of the father's recovery, the state Supreme Court directed a new trial to accomplish that result, thereupon application was made by the administrator to the federal Supreme Court for a writ of certiorari on the ground that such decision involved questions under the federal Employers' Liability Act reviewable by certiorari. Denying the petition for the writ, and holding that the judgment was not final, the court said: "The act in question, although it deprived of the right of review by writ of error which had hitherto obtained in certain cases, and substituted as to such cases the right of petitioning for review by certiorari, subjected this last right to the same limitation as to the finality of the judgment of the state court sought to be reviewed which had prevailed from the beginning under § 709 Rev. Stat., § 237 Judicial Code. Finality, therefore, continues to be an essential for the purposes of the remedy by certiorari conferred by the Act of 1916. It may be indeed said that although the case was remanded by the court below for a new trial, the action of the court was in a sense final because it determined the ultimate right of the father to recover and the general principles by which that right was to be measured. But that contention is not open, as it was settled under section 709 Rev. Stat., § 237 Judicial Code, that the finality contemplated was to be determined by the face of the record and the formal character of the judgment rendered,—a principle which excluded all conception of finality for the purpose of review in a judgment like that below rendered. *Haseltine v. Central Nat. Bank*, 183 U. S. 130, 46 L. ed. 117, 22 Sup. Ct. Rep. 49; *Schlusser v. Hemphill*, 198 U. S. 173, 49 L. ed. 1000, 25 Sup. Ct. Rep. 654; *Louisiana Nav. Co. v. Oyster Commission*, 226 U. S. 99, 57 L. ed. 138, 33 Sup. Ct. Rep. 78; *Coe v. Armour Fertilizer Works*, 237 U. S. 413, 418, 419, 59 L. ed. 1027, 1029, 1030, 35 Sup. Ct. Rep. 625. The re-enactment of the requirement of finality in the Act of 1916 was, in the nature of things, an adoption of the construction on the subject which had prevailed for so long a time. There being, then, no final judgment within the contemplation of the

Act of 1916, the petition for a writ of certiorari is denied."

Reported cases.—A writ of certiorari to the Supreme Court of New York was granted in *Erie R. Co. v. Shuart*, (1918) 246 U. S. 659, 38 S. Ct. 315, 62 U. S. (L. ed.) —, to the Supreme Court of Missouri in *Pryor v. Williams*, (1918) 246 U. S. 660, 38 S. Ct. 332, 62 U. S. (L. ed.) —, to the Court of Appeals of Georgia in *Evans v. Savannah Nat. Bank*, (1918) 246 U. S. 670, 38 S. Ct. 423, 62 U. S. (L. ed.) —.

A writ of certiorari was denied in: *Rouss v. New York Ass'n Bar*, (1918) 246 U. S. 661, 38 S. Ct. 332, 62 U. S. (L. ed.) —, to the Supreme Court of New York; *Berg v. Baker*, (1918) 246 U. S. 661, 38 S. Ct. 332, 62 U. S. (L. ed.) —, to the Supreme Court of Minnesota; *Rieger v. Abrams*, (1918) 246 U. S. 661, 38 S. Ct. 332, 62 U. S. (L. ed.) —, to the Supreme Court of Washington; *Chicago, etc., R. Co. v. Ray*, (1918) 246 U. S. 662, 38 S. Ct. 332, 62 U. S. (L. ed.) —, to the Supreme Court of Oklahoma; *Illinois Cent. R. Co. v. Skinner*, (1918) 246 U. S. 663, 38 S. Ct. 333, 62 U. S. (L. ed.) —, to the Kentucky Court of Appeals; *Craig Mountain Lumber Co. v. Sumey*, (1918) 246 U. S. 667, 38 S. Ct. 336, 62 U. S. (L. ed.) —, to the Supreme Court of Idaho; *Huller v. New Mexico*, (1918) 246 U. S. 667, 38 S. Ct. 336, 62 U. S. (L. ed.) —, to the Supreme Court of New Mexico; *Grand Lodge v. Vicksburg Lodge No. 26*, (1918) 246 U. S. 668, 38 S. Ct. 336, 62 U. S. (L. ed.) —, to the Supreme Court of Mississippi; *Cincinnati Northern R. Co. v. Guy*, (1918) 246 U. S. 668, 38 S. Ct. 336, 62 U. S. (L. ed.) —, to the Supreme Court of Michigan; *White Gulch Min. Co. v. Industrial Acc. Commission*, (1918) 246 U. S. 671, 38 S. Ct. 423, 62 U. S. (L. ed.) —; *Harker v. Greene County*, (1918) 246 U. S. 673, 38 S. Ct. 424, 62 U. S. (L. ed.) —, to the Supreme Court of Iowa; *Citizens Bank v. Opperman*, (1918) 246 U. S. 673, 38 S. Ct. 424, 62 U. S. (L. ed.) —, to the Supreme Court of Indiana; *New York Cent. R. Co. v. Chicago*, (1918) 246 U. S. 673, 38 S. Ct. 424, 62 U. S. (L. ed.) —, to the Supreme Court of Illinois; *Commonwealth Trust Co. v. Pittsburgh First-Second Nat. Bank*, (1918) 246 U. S. 675, 38 S. Ct. 425, 62 U. S. (L. ed.) —, to the Supreme Court of Pennsylvania.

SEC. 2. [Exclusive jurisdiction of United States courts in what cases — Judicial Code, sec. 256, cl. 3, amended.] That clause three of section two hundred and fifty-six of the Judicial Code is hereby amended to read as follows:

"Third. Of all civil causes of admiralty and maritime jurisdiction, saving to suitors in all cases the right of a common-law remedy where the common law is competent to give it, and to claimants the rights and remedies under the workmen's compensation law of any State." [— *Stat. L.* —.]

This is from an Act of Oct. 6, 1917, ch. —, entitled "An Act To amend sections twenty-four and two hundred and fifty-six of the Judicial Code, relating to the jurisdiction of the district courts, so as to save to claimants the rights and remedies under the workman's compensation law of any State."

The reason for the amendment made by this section was doubtless the decision of the Supreme Court in *Southern Pac. Co. v. Jensen*, (1917) 244 U. S. 205, 37 S. Ct. 524, 61 U. S. (L. ed.) 1086, Ann. Cas. 1917E 900, L. R. A. 1918C 451.

Section 1 of this Act amending Judicial Code, § 24 cl. 3, is given, *supra*, p. 401.

For Judicial Code, § 256, cl. 3, amended by this section, see 1912 Supp. Fed. Stat. Ann. 239; 5 Fed. Stat. Ann. (2d ed.) 921, 923.

An Act To amend section two hundred and seventy-six of an Act entitled "An Act to codify, revise and amend the laws relating to the judiciary," approved March third, nineteen hundred and eleven.

[Act of Feb. 3, 1917, ch. 27, 39 Stat. L. 873.]

[Jurors, how drawn — Judicial Code, sec. 276 amended.] That section two hundred and seventy-six of an Act entitled "An Act to codify, revise, and amend the laws relating to the judiciary," approved March third, nineteen hundred and eleven, be, and the same is hereby, amended so as to read as follows:

"SEC. 276. All such jurors, grand and petit, including those summoned during the session of the court, shall be publicly drawn from a box containing, at the time of each drawing, the names of not less than three hundred persons, possessing the qualifications prescribed in the section last preceding, which names shall have been placed therein by the clerk of such court, or a duly qualified deputy clerk, and a commissioner, to be appointed by the judge thereof, or by the judge senior in commission in districts having more than one judge, which commissioner shall be a citizen of good standing, residing in the district in which such court is held, and a well-known member of the principal political party in the district in which the court is held opposing that to which the clerk, or a duly qualified deputy clerk then acting, may belong, the clerk, or a duly qualified deputy clerk, and said commissioner each to place one name in said box alternately, without reference to party affiliations until the whole number required shall be placed therein." [39 Stat. L. 873.]

For Judicial Code, § 276, amended by this Act, see 1912 Supp. Fed. Stat. Ann. 245; 5 Fed. Stat. Ann. 1066.

II. PROVISIONS FOR PARTICULAR DISTRICTS OR CIRCUITS

An Act To provide for holding sessions of the United States district court in the district of Maine and for dividing said district into divisions, and providing for offices of the clerk and marshal of said district to be maintained in each of said divisions, and for the appointment of a field deputy marshal in the division in which the marshal does not reside.

[Act of Sept. 8, 1916, ch. 475, 39 Stat. L. 850.]

[SEC. 1.] [Maine judicial district — sessions of court — division of district.] That hereafter, and until otherwise provided by law, two sessions of the United States District Court for the District of Maine shall be held in each and every year in the city of Bangor, in said district, beginning, respectively, on the first Tuesday of February and the first Tuesday of June, and three sessions of said court shall be held in each and every year in the city of Portland, in said district, beginning, respectively, on the first Tuesday of April, on the third Tuesday of September, and on the second Tuesday in December. *[39 Stat. L. 850.]*

SEC. 2. [Clerks and marshals — deputies.] The clerk of said district court for said district of Maine and the marshal of said district shall each at all times maintain by himself or by deputy an office in charge of himself or deputy, both at said city of Bangor and at said city of Portland. The deputy clerk in charge of the office in the division in which the clerk does not reside himself shall reside in the city where the office of which he has charge is located. That said marshal shall appoint a field deputy, who shall have charge of the office in the division in which the marshal does not reside himself, who shall reside in the city where the office of which he has charge is located, and who, within and for said division, in the absence of the marshal, shall have all the powers of the marshal, and who shall also, throughout said district of Maine, have all the powers of other deputy marshals. And such field deputy, before he enters on the duties of his office, shall give bond before the judge of said district of like tenor, effect, and amount and of similar form and condition, with like sureties, and to be approved in like manner, as now or may hereafter be required by law of the marshal of said district. *[39 Stat. L. 850.]*

SEC. 3. [Divisions — number — boundaries.] That for the purpose of holding terms of the United States district court the district of Maine as heretofore constituted shall be divided into two divisions, to be known, respectively, as the northern and southern divisions. The counties of Aroostook, Penobscot, Piscataquis, Washington, Hancock, Waldo, and Somerset shall be known as the northern division, the court for which shall be held in the said city of Bangor. The remaining counties in said State and district of Maine shall constitute the southern division, the court for which shall be held in the said city of Portland. *[39 Stat. L. 850.]*

SEC. 4. [Jurisdiction and venue — divisions as separate districts.] That for the purpose of determining the jurisdiction and venue of all

causes, suits, actions, bills, petitions, matters, libels, proceedings, prosecutions, indictments, complaints, informations, and other judicial business, whether civil or criminal, or whether in equity, in admiralty, in prize, in forfeiture, or in condemnation, in rem, in personam, or mixed, whatsoever, cognizable in the United States district court, each of said divisions shall be as if it were a separate and distinct judicial district of the United States. There shall be but one judge, one clerk, one marshal, and one district attorney for said district of Maine. United States commissioners in either of said divisions, until otherwise provided by law, shall be appointed and have jurisdiction and cognizance through said district of Maine in the same manner and to the same extent and effect that they now have under existing law. [39 Stat. L. 851.]

SEC. 5. [Transfer of causes from one division to another.] That any cause, suit, action, bill, petition, matter, libel, proceeding, prosecution, indictment, complaint, information, or other judicial business, whether civil or criminal, or whether in equity, in admiralty, in prize, in forfeiture, or in condemnation, in rem, in personam, or mixed, whatsoever, pending in either of said divisions, when all the parties thereto so stipulate in writing, and where the ends of justice or the convenience of the parties will be promoted thereby, may, at the discretion of the court or judge, be transferred wholly or specially for the hearing; trial, or determination of any single proceeding, matter, step, or motion therein from one of said divisions to the other. On request of all accused in any criminal prosecution and of all claimants in any cause, proceeding, libel, information, or other matter in rem, the same may be transferred, at the discretion of the court or judge from one of said divisions to the division in which a term of said court is next to be held, without the joinder in such request of the United States when the Government is the only other party thereto not joining in such request. [39 Stat. L. 851.]

SEC. 6. [Ex parte, etc., proceedings — hearings by consent.] That all ex parte, of course, default and pro confesso, proceedings and matters, and all interlocutory matters in which all interested parties are present and consenting that such hearing may be had, in whichever of said divisions the same may be cognizable or pending, may be heard and determined by the court or judge and all findings, orders, judgments, and decrees be made, and all mesne and final process therein be tested, sealed, issued, and renewed in either of said divisions, in term time, vacation, or chambers. [39 Stat. L. 851.]

SEC. 7. [Change of venue — continuance.] That nothing in this Act contained shall be construed to deprive the court or judge of the power to grant a change of venue or continuance in any cause, proceeding, or matter whatsoever according to law and the requirements of justice. [39 Stat. L. 851.]

SEC. 8. [Time of taking effect of Act — pending causes, etc.— repeal of inconsistent Acts.] That this Act shall take effect on the day following its passage, but it shall not apply to or in anywise affect any cause, suit,

action, bill, petition, matter, libel, proceeding, prosecution, indictment, complaint, information, stipulation, bail bond, or recognizance now pending in said court, or which has already been instituted, begun, filed, entered, made, served, found, or taken, but the same shall depend, be entered, returned, continued, prosecuted, tried, heard, and determined and suitable and appropriate orders, judgment, decrees, and executions, mesne and final and all other process, attachment, monitions, stipulations, bonds, recognizances therein, shall be made, signed, tested, sealed, issued, renewed, served, executed, entered, and returned, the same as under existing law and as if this Act had never been passed, except for the purposes mentioned in sections five and six of this Act. All Acts and parts of Acts inconsistent with this Act are hereby repealed. [39 Stat. L. 851.]

An Act To create an additional judge in the district of New Jersey.

[*Act of April 11, 1916, ch. 67; 39 Stat. L. 48.*]

[SEC. 1.] [New Jersey judicial district — additional judge — residence, etc.] That the President of the United States be, and he hereby is, authorized and directed, by and with the advice and consent of the Senate, to appoint an additional judge of the district court of the United States for the district of New Jersey, who shall reside in said district, and whose term of office, compensation, duties, and powers shall be the same as now provided by law for the judge of said district. [39 Stat. L. 48.]

SEC. 2. [Time of taking effect.]. That this Act shall take effect immediately. [39 Stat. L. 48.]

An Act To establish a term of the United States circuit court of appeals at Asheville, North Carolina.

[*Act of July 17, 1916, ch. 546, 39 Stat. L. 385.*]

[North Carolina Circuit Court of Appeals—Fourth Circuit—additional term.] That the judges of the United States Circuit Court of Appeals for the Fourth Court shall annually open and hold a term of the court of said circuit at Asheville, North Carolina, at such time as may be fixed by the judges thereof. [39 Stat. L. 385.]

An Act Providing for the establishment of two additional terms of the district court for the eastern district of North Carolina at Raleigh, North Carolina.

[*Act of April 27, 1916, ch. 91, 39 Stat. L. 56.*]

[North Carolina eastern judicial district — additional terms.] That two additional terms of the district court, for the trial of civil cases, for the eastern district of North Carolina shall be held at Raleigh, North

Carolina, on the first Monday in March and the first Monday in September. [39 Stat. L. 56.]

An Act To amend an Act entitled "An Act to provide for the appointment of a district judge, district attorney, and marshal for the western district of South Carolina, and for other purposes," approved March third, nineteen hundred and fifteen, so as to provide for terms of the district court to be held at Anderson, South Carolina.

[Act of Sept. 1, 1916, ch. 434, 39 Stat. L. 721.]

[South Carolina — districts — terms — office of clerks — former Act amended.] That section five of an Act entitled "An Act to provide for the appointment of a district judge, district attorney, and marshal for the western district of South Carolina, and for other purposes," approved March third, nineteen hundred and fifteen, be, and the same is hereby, amended so as to read as follows:

"SEC. 5. That the terms of the district court for the eastern district shall be held at Charleston on the first Tuesday in June and December; at Columbia, on the third Tuesday in January and first Tuesday in November; at Florence, first Tuesday in March; and at Aiken, on the first Tuesday in April and October.

"Terms of the district court of the western district shall be held at Greenville on the first Tuesday in April and the first Tuesday in October; at Rock Hill, the second Tuesday in March and September; at Greenwood, the first Tuesday in February and November; and at Anderson, the fourth Tuesday in May and November.

"The office of the clerk of the district court for the western district shall be at Greenville, and the office of the clerk of the district court for the eastern district shall be at Charleston." [39 Stat. L. 721.]

For the Act of March 3, 1915, ch. 100, § 5, amended by this Act, see 1916 Supp. Fed. Stat. Ann. 140; 5 Fed. Stat. Ann. (2d ed.) 1096.

An Act Providing for the establishment of a term of the district court for the middle district of Tennessee at Winchester, Tennessee.

[Act of June 22, 1916, ch. 161, 39 Stat. L. 232.]

[Tennessee middle district — terms.] That the term of the district court for the middle district of Tennessee shall be held at Winchester on the first Monday in April and the third Monday in November. [39 Stat. L. 232.]

An Act To provide for an additional judge in the State of Texas.

[Act of Feb. 26, 1917, ch. 120, 39 Stat. L. 938.]

[Texas western judicial district — additional judge.] That the President of the United States, by and with the advice and consent of the Senate,

shall appoint an additional judge of the district court of the United States for the Western District of Texas, who shall possess the same powers, perform the same duties, and receive the same compensation and allowance as the present judge of said district, and whose official place of residence shall be maintained at El Paso until otherwise provided by law. [39 Stat. L. 938.]

See the following paragraph of the text.

[SEC. 1.] [Texas western judicial district—salary of additional judge.] * * * For the salary of the additional judge in the State of Texas, to be appointed under the Act of February twenty-sixth, nineteen hundred and seventeen, \$6,000. [— Stat. L. —.]

This is from the Sundry Civil Appropriation Act of June 12, 1917, ch. —. The Act of Feb. 26, 1917, ch. 120, mentioned in this section is given in the preceding paragraph of the text.

An Act To create a new division of the northern judicial district of Texas, and to provide for terms of court at Wichita Falls, Texas, and for a clerk for said court, and for other purposes.

[Act of Feb. 26, 1917, ch. 122, 39 Stat. L. 939.]

[SEC. 1.] [Texas northern judicial district—creation.] That the counties of Archer, Baylor, Clay, Cottle, Foard, Montague, King, Knox, Wichita, Wilbarger and Young shall constitute a division of the northern judicial district of Texas.

SEC. 2. [Terms of court—member—place of holding court.] That terms of the district court of the United States for the said northern district of Texas shall be held twice each year at the city of Wichita Falls, in Wichita County, on the fourth Monday in March, and the third Monday in November. The clerk of the court for the northern district of Texas shall maintain an office in charge of himself or a deputy at Wichita Falls, which shall be kept open at all times for the transaction of the business of the court: *Provided*, That suitable accommodations for holding court at Wichita Falls shall be provided by the county or municipal authorities without expense to the United States. [39 Stat. L. 939.]

III. APPELLATE JURISDICTION AND PROCEDURE

SEC. 3. [Finality of judgments of Circuit Court of Appeals—former Act amended.] That section four of "An Act to amend an Act entitled 'An Act to codify, revise, and amend the laws relating to the judiciary,' approved March third, nineteen hundred and eleven," approved January twenty-eighth, nineteen hundred and fifteen, be, and it hereby is, amended so as to read as follows:

"SEC. 4. That judgments and decrees of the circuit courts of appeals in all proceedings and causes arising under 'An Act to establish a uniform system of bankruptcy throughout the United States,' approved July first, eighteen hundred and ninety-eight, and in all controversies arising in such proceedings and causes; also, in all causes arising under 'An Act relating to the liability of common carriers by railroad to their employees in certain cases,' approved April twenty-second, nineteen hundred and eight; also, in all causes arising under 'An Act to promote the safety of employees and travelers upon railroads by limiting the hours of service of employees thereon,' approved March fourth, nineteen hundred and seven; also, in all causes arising under 'An Act to promote the safety of employees and travelers upon railroads by compelling common carriers engaged in interstate commerce to equip their cars with automatic couplers and continuous brakes and their locomotives with driving-wheel brakes, and for other purposes,' approved March second, eighteen hundred and ninety-three; and, also, in all causes arising under any amendment or supplement to any one of the aforementioned Acts which has been heretofore or may hereafter be enacted, shall be final, save only that it shall be competent for the Supreme Court to require by certiorari, upon the petition of any party thereto, that the proceeding, case, or controversy be certified to it for review and determination, with the same power and authority and with like effect as if taken to that court by appeal or writ of error." [39 Stat. L. 727.]

The foregoing section 3 and the following sections 4-7, are from an Act of Sept. 6, 1916, ch. 448, entitled "An Act to amend the Judicial Code; to fix the time when the annual terms of the Supreme Court shall commence; and further to define the jurisdiction of that court."

Sections 1 and 2 of this Act, amending Judicial Code, §§ 230, 237, are given, *supra*, pp. 411, 412.

For the Act of Jan. 28, 1915, ch. 22, § 4, amended by this section, see 1916 Supp. Fed. Stat. Ann. 137, 1 Fed. Stat. Ann. (2d ed.) 833; 6 Fed. Stat. Ann. (2d ed.) 146.

For the Bankruptcy Act of July 1, 1898, ch. 541, mentioned in this section, see 1912 Supp. Fed. Stat. Ann. 464; 1 Fed. Stat. Ann. (2d ed.) 504.

For the Federal Employers' Liability Act of April 22, 1908, ch. 149, mentioned in this section, see 1909 Supp. Fed. Stat. Ann. 584; 8 Fed. Stat. Ann. (2d ed.) 1208.

For the "Hours of Service" Act or the "Sixteen Hours" Act of March 4, 1907, ch. 2939, mentioned in this section, see 1909 Supp. Fed. Stat. Ann. 581; 8 Fed. Stat. Ann. (2d ed.) 1383.

For the Safety Appliance Act of March 2, 1893, ch. 196, mentioned in this section, see 6 Fed. Stat. Ann. 752; 8 Fed. Stat. Ann. (2d ed.) 1155.

Case arising under Federal Employers' Liability Act.—In *Carolina, etc., R. Co. v. Stroup*, (1917) 244 U. S. 649, 37 S. Ct. 743, 61 U. S. (L. ed.) 1371, the court dismissed for want of jurisdiction, upon the authority of this section, a writ of

error to review a judgment of the Circuit Court of Appeals affirming a judgment of the district court in favor of plaintiff in an action under the federal Employers' Liability Act.

SEC. 4. [Review of judgment or decree — mistake as to proper method — effect.] That no court having power to review a judgment or decree rendered or passed by another shall dismiss a writ of error solely because an appeal should have been taken, or dismiss an appeal solely because a writ of error should have been sued out, but when such mistake or error occurs it shall disregard the same and take the action which would be appropriate if the proper appellate procedure had been followed. [39 Stat. L. 727.]

See the note to the preceding section 3 of this Act.

"This section does not abolish the distinction between writs of error and appeals, but only requires that the party seeking review shall have it in the appropriate way notwithstanding a mistake in choosing the mode of review." *Gauzon v. Compania General, etc.*, (1917) 245 U. S. 86, 38 S. Ct. 46, 62 U. S. (L. ed.) —.

Under this section and Judicial Code, sec. 274b, "it would seem to be immaterial whether the case was brought here by appeal or writ of error," said the court in *Union Pac. R. Co. v. Syas*, (C. C. A. 8th Cir. 1917) 246 Fed. 561, 158 C. C. A. 530.

SEC. 5. [Review of judgments, etc., from Philippine Islands.] That no judgment or decree rendered or passed by the Supreme Court of the Philippine Islands more than sixty days after the approval of this Act shall be reviewed by the Supreme Court upon writ or error or appeal; but it shall be competent for the Supreme Court, by certiorari or otherwise, to require that there be certified to it for review and determination, with the same power and authority and with like effect as if brought up by writ of error or appeal, any cause wherein, after such sixty days, the Supreme Court of the Philippine Islands may render or pass a judgment or decree which would be subject to review under existing laws. [39 Stat. L. 727.]

See the note to section 3 of this Act, *supra*, p. 421.

SEC. 6. [Application for writ of error, etc.—time of making—Philippine Islands.] That no writ of error, appeal, or writ of certiorari intended to bring up any cause for review by the Supreme Court shall be allowed or entertained unless duly applied for within three months after entry of the judgment or decree complained of: *Provided*, That writs of certiorari addressed to the Supreme Court of the Philippine Islands may be granted if application therefor be made within six months. [39 Stat. L. 727.]

See the note to section 3 of this Act, *supra*, p. 421.

An appeal from the Circuit Court of Appeals was "dismissed for want of jurisdiction upon the authority of" this section 6 in *Glasgow Nav. Co. v. Munson Steamship Line*, (1918) 246 U. S. 647, 38 S. Ct. 315, 62 U. S. (L. ed.) —.

"Upon the authority of" this section 6, a writ of error to the Kentucky Court of Appeals was "dismissed for want of jurisdiction" in *Collard v. Pittsburgh, etc., R. Co.*, (1918) 246 U. S. 653, 38 S. Ct. 336, 62 U. S. (L. ed.) —.

SEC. 7. [Time of taking effect of Act.] That this Act shall take effect thirty days after its approval, but it shall not apply to nor affect any writ of error, appeal, or writ of certiorari theretofore duly applied for. The right of review under existing laws in respect of judgments and decrees entered before this Act takes effect shall remain unaffected for the period of six months thereafter, but at the end of that time such right shall cease. [39 Stat. L. 728.]

See the note to section 3 of this Act, *supra*, p. 421.

Section 4 not affected.—This section "is a saving clause against other provisions of the act and has no effect upon

section 4." *Shuler v. Raton Waterworks Co.*, (C. C. A. 8th Cir. 1917) 247 Fed. 634.

IV. INTERPLEADER

An Act Authorizing insurance companies and fraternal beneficiary societies to file bills of interpleader.

[*Act of Feb. 22, 1917, ch. 113, 39 Stat. L. 929.*]

[**Interpleader — insurance companies.**] That the district courts of the United States shall have original cognizance to entertain suits in equity begun by bills of interpleader where the same are filed by any insurance company or fraternal beneficiary society, duly verified, and where it is made to appear by such bill that one or more persons, being bona fide claimants against such company or society, reside within the jurisdiction of said court; that such company or society has made or issued some policy of insurance or certificate of membership providing for the payment of a sum of money of at least \$500 as insurance or benefits to a beneficiary or beneficiaries or to the heirs, next of kin, or legal representative of the person insured or member; that two or more adverse claimants, citizens of different States, are claiming or may claim to be entitled to such insurance or benefits and that such company or society deposits the amount of such insurance or benefits with the clerk of said court and abide the judgment of said court. In all such cases the court shall have the power to issue its process for said claimants, returnable at such time as the said court or a judge thereof shall determine, which shall be addressed to and served by the United States marshals for the respective districts wherein said claimants reside or may be found; to hear said bill of interpleader and decide thereon according to the practice in equity; to discharge said complainant from further liability upon the payment of said insurance or benefits as directed by the court, less complainant's actual court costs; and shall have the power to make such orders and decrees as may be suitable and proper and to issue the necessary writs usual and customary in such cases for the purpose of carrying out such orders and decrees: *Provided*, That in all cases where a beneficiary or beneficiaries are named in the policy of insurance or certificate of membership or where the same has been assigned and written notice thereof shall have been given to the insurance company or fraternal benefit society, the bill of interpleader shall be filed in the district where the beneficiary or beneficiaries may reside. [39 Stat. L. 929.]

Deposit of the amount of insurance with the clerk is a sine qua non for power in the court to issue process. *Penn Mut. Life Ins. Co. v. Henderson*, (N. D. Fla. 1917) 244 Fed. 877.

"The proviso would seem to recognize

the residence of the beneficiary named in the policy or his assignee designated by the company as fixing the district of proper venue for plaintiffs' suit." *Penn. Mut. Life Ins. Co. v. Henderson*, (N. D. Fla. 1917) 244 Fed. 877.

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I. CHILD LABOR

An Act To prevent interstate commerce in the products of child labor, and for other purposes.

[Act of Sept. 1, 1916, ch. 432, 39 Stat. L. 675.]

[SEC. 1.] [Child labor — interstate or foreign commerce in products prohibited — age limits — prosecution.] That no producer, manufacturer, or dealer shall ship or deliver for shipment in interstate or foreign commerce any article or commodity the products of any mine or quarry, situated in the United States, in which within thirty days prior to the time of the removal of such product therefrom children under the age of sixteen years have been employed or permitted to work, or any article or commodity the product of any mill, cannery, workshop, factory, or manufacturing establishment, situated in the United States, in which within thirty days prior to the removal of such product therefrom children under the age of fourteen years have been employed or permitted to work, or children between the ages of fourteen years and sixteen years have been employed or permitted to work more than eight hours in any day, or more than six days in any week, or after the hour of seven o'clock postmeridian, or before the hour of six o'clock antemeridian: *Provided*, That a prosecution and conviction of a defendant for the shipment or delivery for shipment of any article or commodity under the conditions herein prohibited shall be a bar to any further prosecution against the same defendant for shipments or deliveries for shipment of any such article or commodity before the beginning of said prosecution. *[39 Stat. L. 675.]*

Constitutionality.—Congress exceeded its power under the commerce clause of the federal Constitution in enacting the provisions of this Act, which prohibit the transportation in interstate commerce of manufactured goods the product of a factory, in which, within thirty days prior to the removal of the goods, children

under fourteen have been employed, or children between fourteen and sixteen have been employed more than eight hours in a day, or more than six days in a week, or between seven in the evening and six in the morning. *Hammer v. Dagenhart*, 247 U. S. —, 61 U. S. (L. ed.) 660, 38 S. Ct. 529.

SEC. 2. [Rules and regulations.] That the Attorney General, the Secretary of Commerce, and the Secretary of Labor shall constitute a board to

make and publish from time to time uniform rules and regulations for carrying out the provisions of this Act. [39 Stat. L. 675.]

SEC. 3. [Authority of Secretary of Labor, etc., to enter and inspect factories.] That for the purpose of securing proper enforcement of this Act the Secretary of Labor, or any person duly authorized by him, shall have authority to enter and inspect at any time mines, quarries, mills, canneries, workshops, factories, manufacturing establishments, and other places in which goods are produced or held for interstate commerce; and the Secretary of Labor shall have authority to employ such assistance for the purposes of this Act as may from time to time be authorized by appropriation or other law. [39 Stat. L. 675.]

SEC. 4. [Duty of district attorney on violation of Act being reported.] That it shall be the duty of each district attorney to whom the Secretary of Labor shall report any violation of this Act, or to whom any State factory or mining or quarry inspector, commissioner of labor, State medical inspector, or school-attendance officer, or any other person shall present satisfactory evidence of any such violation to cause appropriate proceedings to be commenced and prosecuted in the proper courts of the United States without delay for the enforcement of the penalties in such cases herein provided: *Provided*, That nothing in this Act shall be construed to apply to bona fide boys' and girls' canning clubs recognized by the Agricultural Department of the several States and of the United States. [39 Stat. L. 675.]

SEC. 5. [Punishment for violation of Act — guarantee affording protection from prosecution — certificates of permissible age.] That any person who violates any of the provisions of section one of this Act, or who refuses or obstructs entry or inspection authorized by section three of this Act, shall for each offense prior to the first conviction of such person under the provisions of this Act, be punished by a fine of not more than \$200, and shall for each offense subsequent to such conviction be punished by a fine of not more than \$1,000, nor less than \$100, or by imprisonment for not more than three months, or by both such fine and imprisonment, in the discretion of the court: *Provided*, That no dealer shall be prosecuted under the provisions of this Act, for a shipment, delivery for shipment, or transportation who establishes a guaranty issued by the person by whom the goods shipped or delivered for shipment or transportation were manufactured or produced, resident in the United States, to the effect that such goods were produced or manufactured in a mine or quarry in which within thirty days prior to their removal therefrom no children under the age of sixteen years were employed or permitted to work, or in a mill, cannery, workshop, factory, or manufacturing establishment, in which within thirty days prior to the removal of such goods therefrom no children under the age of fourteen years were employed or permitted to work, nor children between the ages of fourteen years and sixteen years employed or permitted to work more than eight hours in any day or more than six days in any week or after the hour of seven o'clock postmeridian or before the hour of six o'clock ante-meridian; and in such event, if the guaranty contains any false statement of a material fact, the guarantor shall be amenable to prosecution and to

the fine or imprisonment provided by this section for violation of the provisions of this Act. Said guaranty, to afford the protection above provided, shall contain the name and address of the person giving the same: *And provided further*, That no producer, manufacturer, or dealer shall be prosecuted under this Act for the shipment, delivery for shipment, or transportation of a product of any mine, quarry, mill, cannery, workshop, factory, or manufacturing establishment, if the only employment therein, within thirty days prior to the removal of such product therefrom, of a child under the age of sixteen years has been that of a child as to whom the producer or manufacturer has in good faith procured, at the time of employing such child, and has since in good faith relied upon and kept on file a certificate, issued in such form, under such conditions, and by such persons as may be prescribed by the board, showing the child to be of such an age that the shipment, delivery for shipment, or transportation was not prohibited by this Act. Any person who knowingly makes a false statement or presents false evidence in or in relation to any such certificate or application therefor shall be amenable to prosecution and to the fine or imprisonment provided by this section for violations of this Act. In any State designated by the board, an employment certificate or other similar paper as to the age of the child, issued under the laws of that State and not inconsistent with the provisions of this Act, shall have the same force and effect as a certificate herein provided for. [39 Stat. L. 675.]

SEC. 6. [Definitions — Construction of terms.] That the word “ person ” as used in this Act shall be construed to include any individual or corporation or the members of any partnership or other unincorporated association. The term “ ship or deliver for shipment in interstate or foreign commerce ” as used in this Act means to transport or to ship or deliver for shipment from any State or Territory or the District of Columbia to or through any other State or Territory or the District of Columbia or to any foreign country; and in the case of a dealer means only to transport or to ship or deliver for shipment from the State, Territory, or district of manufacture or production. [39 Stat. L. 676.]

SEC. 7. [Time of taking effect of Act.] That this Act shall take effect from and after one year from the date of its passage. [39 Stat. L. 676.]

II. HOURS OF LABOR

[Eight hour law — national emergency — suspension of law.] * * * That in case of national emergency the President is authorized to suspend provisions of law prohibiting more than eight hours labor in any one day of persons engaged upon work covered by contracts with the United States: *Provided further*, That the wages of persons employed upon such contracts shall be computed on a basic day rate of eight hours work, with overtime rates to be paid for at not less than time and one-half for all hours work in excess of eight hours. [39 Stat. L. 1192.]

This is from the Naval Appropriation Act of March 4, 1917, ch. 180.

III. COMPENSATION FOR INJURIES TO EMPLOYEES

An Act To provide compensation for employees of the United States suffering injuries while in the performance of their duties, and for other purposes.

[*Act of Sept. 7, 1916, ch. 458, 39 Stat. L. 742.*]

[SEC. 1.] **[Compensation for government employees injured while in performance of duties.]** That the United States shall pay compensation as hereinafter specified for the disability or death of an employee resulting from a personal injury sustained while in the performance of his duty, but no compensation shall be paid if the injury or death is caused by the willful misconduct of the employee or by the employee's intention to bring about the injury or death of himself or of another, or if intoxication of the injured employee is the proximate cause of the injury or death. [39 Stat. L. 742.]

By the Act of March 4, 1917, ch. 180, *supra*, p. 428, the President was authorized in cases of national emergency to suspend provisions of law prohibiting more than eight hours' labor in any one day of persons engaged upon work covered by contracts with the United States.

SEC. 2. **[First three days of disability — exclusion of compensation.]** That during the first three days of disability the employee shall not be entitled to compensation except as provided in section nine. No compensation shall at any time be paid for such period. [39 Stat. L. 743.]

SEC. 3. **[Total disability — compensation.]** That if the disability is total the United States shall pay to the disabled employee during such disability a monthly compensation equal to sixty-six and two-thirds per centum of his monthly pay, except as hereinafter provided. [39 Stat. L. 743.]

SEC. 4. **[Partial disability — compensation — affidavit.]** That if the disability is partial the United States shall pay to the disabled employee during such disability a monthly compensation equal to sixty-six and two-thirds per centum of the difference between his monthly pay and his monthly wage-earning capacity after the beginning of such partial disability. The commission may, from time to time, require a partially disabled employee to make an affidavit as to the wages which he is then receiving. In such affidavit the employee shall include a statement of the value of housing, board, lodging, and other advantages which are received from the employer as a part of his remuneration and which can be estimated in money. If the employee, when required, fails to make such affidavit, he shall not be entitled to any compensation while such failure continues, and the period of such failure shall be deducted from the period during which compensation is payable to him. [39 Stat. L. 743.]

SEC. 5. **[Partially disabled employee — duty to accept suitable work.]** That if a partially disabled employee refuses to seek suitable work or refuses or neglects to work after suitable work is offered to, procured by, or secured for him, he shall not be entitled to any compensation. [39 Stat. L. 743.]

SEC. 6. [Monthly compensation — minors — apprentices — decrease for old age.] That the monthly compensation for total disability shall not be more than \$66.67 nor less than \$33.33, unless the employee's monthly pay is less than \$33.33, in which case his monthly compensation shall be the full amount of his monthly pay. The monthly compensation for partial disability shall not be more than \$66.67. In the case of persons who at the time of the injury were minors or employed in a learner's capacity and who were not physically or mentally defective, the commission shall, on any review after the time when the monthly wage-earning capacity of such persons would probably, but for the injury, have increased, award compensation based on such probable monthly wage-earning capacity. The commission may, on any review after the time when the monthly wage-earning capacity of the disabled employee would probably, irrespective of the injury, have decreased on account of old age, award compensation based on such probable monthly wage-earning capacity. [39 Stat. L. 743.]

SEC. 7. [Receipt of compensation as preventing acceptance of other remuneration from government.] That as long as the employee is in receipt of compensation under this Act, or, if he has been paid a lump sum in commutation of installment payments, until the expiration of the period during which such installment payments would have continued, he shall not receive from the United States any salary, pay, or remuneration whatsoever except in return for services actually performed, and except pensions for service in the Army or Navy of the United States. [39 Stat. L. 743.]

SEC. 8. [Annual or sick leave — beginning of compensation.] That if at the time the disability begins the employee has annual or sick leave to his credit he may, subject to the approval of the head of the department, use such leave until it is exhausted, in which case his compensation shall begin on the fourth day of disability after the annual or sick leave has ceased. [39 Stat. L. 743.]

SEC. 9. [Medical, etc., services and supplies — furnishing by government — transportation for treatment.] That immediately after an injury sustained by an employee while in the performance of his duty, whether or not disability has arisen, and for a reasonable time thereafter, the United States shall furnish to such employee reasonable medical, surgical, and hospital services and supplies unless he refuses to accept them. Such services and supplies shall be furnished by United States medical officers and hospitals, but where this is not practicable shall be furnished by private physicians and hospitals designated or approved by the commission and paid for from the employees' compensation fund. If necessary for the securing of proper medical, surgical, and hospital treatment, the employee, in the discretion of the commission, may be furnished transportation at the expense of the employees' compensation fund. [39 Stat. L. 744.]

SEC. 10. [Death resulting from injury — compensation to dependents — amount — conditions.] That if death results from the injury within six years the United States shall pay to the following persons for the following

periods a monthly compensation equal to the following percentages of the deceased employee's monthly pay, subject to the modification that no compensation shall be paid where the death takes place more than one year after the cessation of disability resulting from such injury, or, if there has been no disability preceding death, more than one year after the injury:

(A) To the widow, if there is no child, thirty-five per centum. This compensation shall be paid until her death or marriage.

(B) To the widower, if there is no child, thirty-five per centum if wholly dependent for support upon the deceased employee at the time of her death. This compensation shall be paid until his death or marriage.

(C) To the widow or widower, if there is a child, the compensation payable under clause (A) or clause (B) and in addition thereto ten per centum for each child, not to exceed a total of sixty-six and two-thirds per centum for such widow or widower and children. If a child has a guardian other than the surviving widow or widower, the compensation payable on account of such child shall be paid to such guardian. The compensation payable on account of any child shall cease when he dies, marries, or reaches the age of eighteen, or, if over eighteen, and incapable of self-support, becomes capable of self-support.

(D) To the children, if there is no widow or widower, twenty-five per centum for one child and ten per centum additional for each additional child, not to exceed a total of sixty-six and two-thirds per centum, divided among such children share and share alike. The compensation of each child shall be paid until he dies, marries, or reaches the age of eighteen, or, if over eighteen and incapable of self-support, becomes capable of self-support. The compensation of a child under legal age shall be paid to its guardian.

(E) To the parents, if one is wholly dependent for support upon the deceased employee at the time of his death and the other is not dependent to any extent, twenty-five per centum; if both are wholly dependent, twenty per centum to each; if one is or both are partly dependent, a proportionate amount in the discretion of the commission.

The above percentages shall be paid if there is no widow, widower, or child. If there is a widow, widower, or child, there shall be paid so much of the above percentages as, when added to the total percentages payable to the widow, widower, and children, will not exceed a total of sixty-six and two-thirds per centum.

(F) To the brothers, sisters, grandparents, and grandchildren, if one is wholly dependent upon the deceased employee for support at the time of his death, twenty per centum to such dependent; if more than one are wholly dependent, thirty per centum, divided among such dependents share and share alike; if there is no one of them wholly dependent, but one or more partly dependent, ten per centum divided among such dependents share and share alike.

The above percentages shall be paid if there is no widow, widower, child, or dependent parent. If there is a widow, widower, child, or dependent parent, there shall be paid so much of the above percentages as, when added to the total percentage payable to the widow, widower, children, and dependent parents, will not exceed a total of sixty-six and two-thirds per centum,

(G) The compensation of each beneficiary under clauses (E) and (F) shall be paid for a period of eight years from the time of the death, unless before that time he, if a parent or grandparent, dies, marries, or ceases to be dependent, or, if a brother, sister, or grandchild, dies, marries, or reaches the age of eighteen, or, if over eighteen and incapable of self-support, becomes capable of self-support. The compensation of a brother, sister, or grandchild under legal age shall be paid to his or her guardian.

(H) As used in this section, the term "child" includes stepchildren, adopted children, and posthumous children, but does not include married children. The terms "brother" and "sister" include stepbrothers and stepsisters, half brothers and half sisters, and brothers and sisters by adoption, but do not include married brothers or married sisters. All of the above terms and the term "grandchild" include only persons who at the time of the death of the deceased employee are under eighteen years of age or over that age and incapable of self-support. The term "parent" includes stepparents and parents by adoption. The term "widow" includes only the decedent's wife living with or dependent for support upon him at the time of his death. The term "widower" includes only the decedent's husband dependent for support upon her at the time of her death. The terms "adopted" and "adoption" as used in this clause include only legal adoption prior to the time of the injury.

(I) Upon the cessation of compensation under this section to or on account of any person, the compensation of the remaining persons entitled to compensation for the unexpired part of the period during which their compensation is payable shall be that which such persons would have received if they had been the only persons entitled to compensations at the time of the decedent's death.

(J) In case there are two or more classes of persons entitled to compensation under this section and the apportionment of such compensation, above provided, would result in injustice, the commission may, in its discretion, modify the apportionment to meet the requirements of the case.

(K) In computing compensation under this section, the monthly pay shall be considered not to be more than \$100 nor less than \$50, but the total monthly compensation shall not exceed the monthly pay computed as provided in section twelve.

(L) If any person entitled to compensation under this section, whose compensation by the terms of this section ceases upon his marriage, accepts any payments of compensation after his marriage he shall be punished by a fine of not more than \$2,000 or by imprisonment for not more than one year, or by both such fine and imprisonment. [39 Stat. L. 745.]

SEC. 11. [Burial expenses.] That if death results from the injury within six years the United States shall pay to the personal representative of the deceased employee burial expenses not to exceed \$100, in the discretion of the commission. In the case of an employee whose home is within the United States, if his death occurs away from his home office or outside of the United States, and if so desired by his relatives, the body shall, in the discretion of the commission, be embalmed and transported in a hermetically sealed casket to the home of the employee. Such burial expenses shall not be paid and such transportation shall not be furnished where the

death takes place more than one year after the cessation of disability resulting from such injury, or, if there has been no disability preceding death, more than one year after the injury. [39 Stat. L. 745.]

SEC. 12. [Computation of monthly pay.] That in computing the monthly pay the usual practice of the service in which the employee was employed shall be followed. Subsistence and the value of quarters furnished an employee shall be included as part of the pay, but overtime pay shall not be taken into account. [39 Stat. L. 746.]

SEC. 13. [Determination of employee's wage-earning capacity after partial disability.] That in the determination of the employee's monthly wage-earning capacity after the beginning of partial disability, the value of housing, board, lodging, and other advantages which are received from his employer as a part of his remuneration and which can be estimated in money shall be taken into account. [39 Stat. L. 746.]

SEC. 14. [Lump sum compensation — computation.] That in cases of death or of permanent total or permanent partial disability, if the monthly payment to the beneficiary is less than \$5 a month, or if the beneficiary is or is about to become a nonresident of the United States, or if the commission determines that it is for the best interests of the beneficiary, the liability of the United States for compensation to such beneficiary may be discharged by the payment of a lump sum equal to the present value of all future payments of compensation computed at four per centum true discount compounded annually. The probability of the beneficiary's death before the expiration of the period during which he is entitled to compensation shall be determined according to the American Experience Table of Mortality; but in the case of compensation to the widow or widower of the deceased employee, such lump sum shall not exceed sixty months' compensation. The probability of the happening of any other contingency affecting the amount or duration of the compensation shall be disregarded. [39 Stat. L. 746.]

SEC. 15. [Notice of injury — necessity.] That every employee injured in the performance of his duty, or some one on his behalf, shall, within forty-eight hours after the injury, give written notice thereof to the immediate superior of the employee. Such notice shall be given by delivering it personally or by depositing it properly stamped and addressed in the mail. [39 Stat. L. 746.]

SEC. 16. [Form of notice.] That the notice shall state the name and address of the employee, the year, month, day, and hour when and the particular locality where the injury occurred, and the cause and nature of the injury, and shall be signed by and contain the address of the person giving the notice. [39 Stat. L. 746.]

SEC. 17. [Failure to give notice within time specified — effect.] That unless notice is given within the time specified or unless the immediate superior has actual knowledge of the injury, no compensation shall be

allowed, but for any reasonable cause shown, the commission may allow compensation if the notice is filed within one year after the injury. [39 Stat. L. 746.]

SEC. 18. [Claim for compensation—necessity.] That no compensation under this Act shall be allowed to any person, except as provided in section thirty-eight, unless he or some one on his behalf shall, within the time specified in section twenty, make a written claim therefor. Such claim shall be made by delivering it at the office of the commission or to any commissioner or to any person whom the commission may by regulation designate, or by depositing it in the mail properly stamped and addressed to the commission or to any person whom the commission may by regulation designate. [39 Stat. L. 746.]

SEC. 19. [Form of claim.] That every claim shall be made on forms to be furnished by the commission and shall contain all the information required by the commission. Each claim shall be sworn to by the person entitled to compensation or by the person acting on his behalf, and, except in case of death, shall be accompanied by a certificate of the employee's physician stating the nature of the injury and the nature and probable extent of the disability. For any reasonable cause shown the commission may waive the provisions of this section. [39 Stat. L. 746.]

SEC. 20. [Time of making claim.] That all original claims for compensation for disability shall be made within sixty days after the injury. All original claims for compensation for death shall be made within one year after the death. For any reasonable cause shown the commission may allow original claims for compensation for disability to be made at any time within one year. [39 Stat. L. 747.]

SEC. 21. [Submission of injured employee to examination by physician, etc.—refusal to submit to examination.] That after the injury the employee shall, as frequently and at such times and places as may be reasonably required, submit himself to examination by a medical officer of the United States or by a duly qualified physician designated or approved by the commission. The employee may have a duly qualified physician designated and paid by him present to participate in such examination. For all examinations after the first the employee shall, in the discretion of the commission, be paid his reasonable traveling and other expenses and loss of wages incurred in order to submit to such examination. If the employee refuses to submit himself for or in any way obstructs any examination, his right to claim compensation under this Act shall be suspended until such refusal or obstruction ceases. No compensation shall be payable while such refusal or obstruction continues, and the period of such refusal or obstruction shall be deducted from the period for which compensation is payable to him. [39 Stat. L. 747.]

SEC. 22. [Disagreement between physicians making examination.] That in case of any disagreement between the physician making an examination on the part of the United States and the employee's physician the

commission shall appoint a third physician, duly qualified, who shall make an examination. [39 Stat. L. 747.]

SEC. 23. [Fees for examinations.] The fees for examinations made on the part of the United States under sections twenty-one and twenty-two by physicians who are not already in the service of the Unired [sic] States shall be fixed by the commission. Such fees, and any sum payable to the employee under section twenty-one, shall be paid out of the appropriation for the work of the commission. [39 Stat. L. 747.]

SEC. 24. [Report of injury by immediate superior.] That immediately after an injury to an employee resulting in his death or in his probable disability, his immediate superior shall make a report to the commission containing such information as the commission may require, and shall thereafter make such supplementary reports as the commission may require. [39 Stat. L. 747.]

SEC. 25. [Assignment of claim for compensation.] That any assignment of a claim for compensation under this Act shall be void and all compensation and claims therefor shall be exempt from all claims of creditors. [39 Stat. L. 747.]

SEC. 26. [Liability of third person for injury to government employee — assignment of claim to government.] If an injury or death for which compensation is payable under this Act is caused under circumstances creating a legal liability upon some person other than the United States to pay damages therefor, the commission may require the beneficiary to assign to the United States any right of action he may have to enforce such liability of such other person or any right which he may have to share in any money or other property received in satisfaction of such liability of such other person, or the commission may require said beneficiary to prosecute said action in his own name.

If the beneficiary shall refuse to make such assignment or to prosecute said action in his own name when required by the commission, he shall not be entitled to any compensation under this Act.

The cause of action when assigned to the United States may be prosecuted or compromised by the commission, and if the commission realizes upon such cause of action, it shall apply the money or other property so received in the following manner: After deducting the amount of any compensation already paid to the beneficiary and the expenses of such realization or collection, which sum shall be placed to the credit of the employees' compensation fund, the surplus, if any, shall be paid to the beneficiary and credited upon any future payments of compensation payable to him on account of the same injury. [39 Stat. L. 747.]

SEC. 27. [Money, etc., received from third person liable for injury — disposition.] That if an injury or death for which compensation is payable under this Act is caused under circumstances creating a legal liability in some person other than the United States to pay damages therefor, and a beneficiary entitled to compensation from the United States for such

injury or death receives, as a result of a suit brought by him or on his behalf, or as a result of a settlement made by him or on his behalf, any money or other property in satisfaction of the liability of such other person, such beneficiary shall, after deducting the costs of suit and a reasonable attorney's fee, apply the money or other property so received in the following manner:

(A) If his compensation has been paid in whole or in part, he shall refund to the United States the amount of compensation which has been paid by the United States and credit any surplus upon future payments of compensation payable to him on account of the same injury. Any amount so refunded to the United States shall be placed to the credit of the 'employees' compensation fund.

(B) If no compensation has been paid to him by the United States, he shall credit the money or other property so received upon any compensation payable to him by the United States on account of the same injury. [39 Stat. L. 748.]

SEC. 28. [United States Employees' Compensation Commission — creation — membership — term — salary — offices.] That a commission is hereby created, to be known as the United States Employees' Compensation Commission, and to be composed of three commissioners appointed by the President, by and with the advice and consent of the Senate, one of whom shall be designated by the President as chairman. No commissioner shall hold any other office or position under the United States. No more than two of said commissioners shall be members of the same political party. One of said commissioners shall be appointed for a term of two years, one for a term of four years, and one for a term of six years, and at the expiration of each of said terms, the commissioner then appointed shall be appointed for a period of six years. Each commissioner shall receive a salary of \$4,000 a year. The principal office of said commission shall be in Washington, District of Columbia, but the said commission is authorized to perform its work at any place deemed necessary by said commission, subject to the restrictions and limitations of this Act. [39 Stat. L. 748.]

SEC. 28a. [Abolishment of similar commissions and bureaus — transfer of clerks, etc.] Upon the organization of said commission and notification to the heads of all executive departments that the commission is ready to take up the work devolved upon it by this Act, all commissions and independent bureaus, by or in which payments for compensation are now provided, together with the adjustment and settlement of such claims, shall cease and determine, and such executive departments, commissions and independent bureaus shall transfer all pending claims to said commission to be administered by it. The said commission may obtain, in all cases, in addition to the reports provided in section twenty-four, such information and such reports from employees of the departments as may be agreed upon by the commission and the heads of the respective departments. All clerks and employees now exclusively engaged in carrying on said work in the various executive departments, commissions, and independent bureaus, shall be transferred to, and become employees of, the commission at their present grades and salaries. [39 Stat. L. 748.]

SEC. 29. **[Authority of commission — subpoenas — examination of witnesses.]** That the commission, or any commissioner by authority of the commission, shall have power to issue subpoenas for and compel the attendance of witnesses within a radius of one hundred miles, to require the production of books, papers, documents, and other evidence, to administer oaths, and to examine witnesses, upon any matter within the jurisdiction of the commission. [39 Stat. L. 748.]

SEC. 30. **[Assistants — clerks — employees.]** That the commission shall have such assistants, clerks, and other employees as may be from time to time provided by Congress. They shall be appointed from lists of eligibles to be supplied by the Civil Service Commission, and in accordance with the civil-service law. [39 Stat. L. 748.]

SEC. 31. **[Annual estimates of appropriations.]** That the commission shall submit annually to the Secretary of the Treasury estimates of the appropriations necessary for the work of the commission. [39 Stat. L. 749.]

SEC. 32. **[Rules and regulations.]** That the commission is authorized to make necessary rules and regulations for the enforcement of this Act, and shall decide all questions arising under this Act. [39 Stat. L. 749.]

SEC. 33. **[Report to Congress of work of commission.]** That the commission shall make to Congress at the beginning of each regular session a report of its work for the preceding fiscal year, including a detailed statement of appropriations and expenditures, a detailed statement showing receipts of and expenditures from the employees' compensation fund, and its recommendations for legislation. [39 Stat. L. 749.]

SEC. 34. **[Appropriation for expenses.]** That for the fiscal year ending June thirtieth, nineteen hundred and seventeen, there is hereby authorized to be appropriated, from any money in the Treasury not otherwise appropriated, the sum of \$50,000 for the work of the commission, including salaries of the commissioners and of such assistants, clerks, and other employees as the commission may deem necessary, and for traveling expenses, expenses of medical examinations under sections twenty-one and twenty-two, reasonable traveling and other expenses and loss of wages payable to employees under section twenty-one, rent and equipment of offices, purchase of books, stationery, and other supplies, printing and binding to be done at the Government Printing Office, and other necessary expenses. [39 Stat. L. 749.]

SEC. 35. **[Employees' compensation fund.]** That there is hereby authorized to be appropriated, from any money in the Treasury not otherwise appropriated, the sum of \$500,000, to be set aside as a separate fund in the Treasury, to be known as the employees' compensation fund. To this fund there shall be added such sums as Congress may from time to time appropriate for the purpose. Such fund, including all additions that may be made to it, is hereby authorized to be permanently appropriated for the

payment of the compensation provided by this Act, including the medical, surgical, and hospital services and supplies provided by section nine, and the transportation and burial expenses provided by sections nine and eleven. The commission shall submit annually to the Secretary of the Treasury estimates of the appropriations necessary for the maintenance of the fund. [39 Stat. L. 749.]

SEC. 36. [Award of commission on investigation of claim for compensation.] The commission, upon consideration of the claim presented by the beneficiary, and the report furnished by the immediate superior and the completion of such investigation as it may deem necessary, shall determine and make a finding of facts thereon and make an award for or against payment of the compensation provided for in this Act. Compensation when awarded shall be paid from the employees' compensation fund. [39 Stat. L. 749.]

SEC. 37. [Review of award.] That if the original claim for compensation has been made within the time specified in section twenty, the commission may, at any time, on its own motion or on application, review the award, and, in accordance with the facts found on such review, may end, diminish, or increase the compensation previously awarded, or, if compensation has been refused or discontinued, award compensation. [39 Stat. L. 749.]

SEC. 38. [Cancellation of award — mistake of law or fact.] That if any compensation is paid under a mistake of law or of fact, the commission shall immediately cancel any award under which such compensation has been paid and shall recover, as far as practicable, any amount which has been so paid. Any amount so recovered shall be placed to the credit of the employees' compensation fund. [39 Stat. L. 749.]

SEC. 39. [False affidavits — perjury.] That whoever makes, in any affidavit required under section four or in any claim for compensation, any statement, knowing it to be false, shall be guilty of perjury and shall be punished by a fine of not more than \$2,000, or by imprisonment for not more than one year, or by both such fine and imprisonment. [39 Stat. L. 749.]

SEC. 40. [Definition and construction of language of Act.] That wherever used in this Act —

The singular includes the plural and the masculine includes the feminine.

The term "employee" includes all civil employees of the United States and of the Panama Railroad Company.

The term "commission" shall be taken to refer to the United States Employees' Compensation Commission provided for in section twenty-eight.

The term "physician" includes surgeons.

The term "monthly pay" shall be taken to refer to the monthly pay at the time of the injury. [39 Stat. L. 750.]

SEC. 41. [Repeal of inconsistent Acts—injuries under Panama Railroad Company.] That all Acts or parts of Acts inconsistent with this Act are hereby repealed: *Provided, however,* That for injuries occurring prior to the passage of this Act compensation shall be paid under the law in force at the time of the passage of this Act: *And provided further,* That if an injury or death for which compensation is payable under this Act is caused under circumstances creating a legal liability in the Panama Railroad Company to pay damages therefor under the laws of any State, Territory, or possession of the United States or of the District of Columbia or of any foreign country, no compensation shall be payable until the person entitled to compensation releases to the Panama Railroad Company any right of action which he may have to enforce such liability of the Panama Railroad Company, or until he assigns to the United States any right which he may have to share in any money or other property received in satisfaction of such liability of the Panama Railroad Company. [39 Stat. L. 750.]

SEC. 42. [Administration of Act in Canal Zone and Alaska—performance of duties of commission by others.] That the President may, from time to time, transfer the administration of this Act so far as employees of the Panama Canal and of the Panama Railroad Company are concerned to the governor of the Panama Canal, and so far as employees of the Alaskan Engineering Commission are concerned to the chairman of that commission, in which cases the words "commission" and "its" wherever they appear in this Act shall, so far as necessary to give effect to such transfer, be read "governor of the Panama Canal" or "chairman of the Alaskan Engineering Commission," as the case may be, and "his"; and the expenses of medical examinations under sections twenty-one and twenty-two, and the reasonable traveling and other expenses and loss of wages payable to employees under section twenty-one, shall be paid out of appropriations for the Panama Canal or for the Alaskan Engineering Commission or out of funds of the Panama Railroad, as the case may be, instead of out of the appropriation for the work of the commission.

In the case of compensation to employees of the Panama Canal or of the Panama Railroad Company for temporary disability, either total or partial, the President may authorize the governor of the Panama Canal to waive, at his discretion, the making of the claim required by section eighteen. In the case of alien employees of the Panama Canal or of the Panama Railroad Company, or of any class or classes of them, the President may remove or modify the minimum limit established by section six on the monthly compensation for disability and the minimum limit established by clause (K) of section ten on the monthly pay on which death compensation is to be computed. The President may authorize the governor of the Panama Canal and the chairman of the Alaskan Engineering Commission to pay the compensation provided by this Act, including the medical, surgical,

and hospital services and supplies provided by section nine and the transportation and burial expenses provided by sections nine and eleven, out of the appropriations for the Panama Canal and for the Alaskan Engineering Commission, such appropriations to be reimbursed for such payments by the transfer of funds from the employees' compensation fund. [*39 Stat. L. 750.*]

IV. HOUSING FOR EMPLOYEES

An Act To authorize and empower the United States Shipping Board Emergency Fleet Corporation to purchase, lease, requisition, or otherwise acquire, and to sell or otherwise dispose of improved or unimproved land, houses, buildings, and for other purposes.

[*Act of March 1, 1918, ch. —, — Stat. L. —.*]

[**SEC. 1.**] [**United States Shipping Board Emergency Fleet Corporation — housing shipyard employees — acquisition and disposition of property — loans.**] That the United States Shipping Board Emergency Fleet Corporation is hereby authorized and empowered within the limits of the amounts herein authorized —

(a) To purchase, lease, requisition, including the requisition of the temporary use of, or acquire by condemnation or otherwise any improved or unimproved land or any interest therein suitable for the construction thereon of houses for the use of employees and the families of employees of shipyards in which ships are being constructed for the United States.

(b) To construct on such land for the use of such employees and their families houses and all other necessary or convenient facilities, upon such conditions and at such price as may be determined by it, and to sell, lease, or exchange such houses, land, and facilities upon such terms and conditions as it may determine.

(c) To purchase, lease, requisition, including the requisition of the temporary use of, or acquire by condemnation or otherwise any houses or other buildings for the use of such employees and their families, together with the land on which the same are erected, or any interest therein, all necessary and proper fixtures and furnishings therefor, and all necessary and convenient facilities incidental thereto; to manage, repair, sell, lease, or exchange such lands, houses, buildings, fixtures, furnishings and facilities upon such terms and conditions as it may determine to carry out the purposes of this Act.

(d) To make loans to persons, firms, or corporations in such manner upon such terms and security, and for such time not exceeding ten years, as it may determine to provide houses and facilities for the employees and the families of employees of such shipyards. [— *Stat. L. —.*]

For provisions relating to the United States Shipping Board Fleet Corporation, see SHIPPING AND NAVIGATION, *post.*

[**SEC. 2.**] [**Compensation for property acquired.**] Whenever said United States Shipping Board Emergency Fleet Corporation shall acquire by requisition or condemnation such property or any interest therein, it shall

determine and make just compensation therefor, and if the amount thereof so determined is unsatisfactory to the person entitled to receive the same, such person shall be paid seventy-five per centum of the amount so determined, and shall be entitled to sue the United States to recover such further sum as added to such seventy-five per centum will make such an amount as will be just compensation for the property or interest therein so taken, in the manner provided by section twenty-four, paragraph twenty, and section one hundred and forty-five of the Judicial Code. [— *Stat. L.* —.]

For Judicial Code, § 24, par. 20, see 1912 Supp. Fed. Stat. Ann. 140; 4 Fed. Stat. Ann. (2d ed.) 1059.

For Judicial Code, § 145, see 1912 Supp. Fed. Stat. Ann. 200; 5 Fed. Stat. Ann. (2d ed.) 649.

[SEC. 3.] **[Immediate possession of property acquired.]** That whenever the said United States Shipping Board Emergency Fleet Corporation shall requisition any property or rights, or upon the filing of a petition for condemnation hereunder, immediate possession may be taken by it of such land, houses, or other property, rights, and facilities, to the extent of the interests to be acquired therein, and the same may be immediately occupied and used, and the provisions of section three hundred and fifty-five of the Revised Statutes, providing that no public money shall be expended upon such land until the written opinion of the Attorney General shall be had in favor of the validity of the title nor until the consent of the legislature of the State in which the land is located has been given, shall be, and the same are hereby, suspended as to all land acquired hereunder. [— *Stat. L.* —.]

For R. S. sec. 355, see 6 Fed. Stat. Ann. 695; 8 Fed. Stat. Ann. (2d ed.) 1105.

[SEC. 4.] **[Period of authority granted herein.]** The power to acquire property by purchase, lease, requisition, or condemnation, or to construct houses, or other buildings, and to make loans, or otherwise extend aid as herein granted shall cease with the termination of the present war with Germany. The date of the conclusion of the war shall be declared by proclamation of the President. [— *Stat. L.* —.]

[SEC. 5.] **[Definitions.]** The word "person" used herein shall include a trustee, firm, or corporation. The word "shipyard" shall include any factory, workshop, warehouse, engine works, buildings, or grounds used for manufacturing, assembling, construction, or other process in shipyards and dockyards and discharging terminals, and other facilities connected therewith, now or hereafter used in connection with shipbuilding. [— *Stat. L.* —.]

[SEC. 6.] **[Expenditure authorized — contracts — terms and conditions — report to Congress.]** That for the purpose of carrying out the provisions of this Act the expenditure of \$50,000,000 is hereby authorized, and in executing the authority granted by this Act, the said United States Shipping Board Emergency Fleet Corporation shall not expend or obligate the United States to expend more than the said sum, nor shall any contract for construction be entered into which provides that the compensation of

the contractor shall be the cost of construction plus a percentage thereof for profit, unless such contract shall also fix the reasonable cost of such construction as determined by the United States Shipping Board Emergency Fleet Corporation and provide that upon any increase in cost above the reasonable cost so fixed by such board, the percentage of profit shall decrease as the cost increases in accordance with a rate to be fixed by said board and expressed in the contract. No contract shall be let without the approval of the United States Shipping Board Emergency Fleet Corporation: *Provided, however,* That nothing herein contained shall be construed to prevent said board from contracting for the payment of premiums or bonuses for the speedy completion of the work contracted for: *Provided further,* That the United States Shipping Board Emergency Fleet Corporation shall report to Congress on the first Monday in December of each year the names of all persons or corporations with whom it has made contracts and of such subcontractors as may be employed in furtherance of this Act, including a statement of the purposes and amounts thereof, together with a detailed statement of all expenditures by contract or otherwise for land, buildings, material, labor, salaries, commissions, demurrage, or other charges in excess of \$10,000. [— *Stat. L.* —.]

An Act To authorize the President to provide housing for war needs.

[*Act of May 16, 1918, ch. —, — Stat. L. —.*]

[**SEC. 1.**] [**Housing for war needs — authority of President to take property.**] That the President, for the purposes of providing housing, local transportation and other general community utilities for such industrial workers as are engaged in arsenals and navy yards of the United States and in industries connected with and essential to the national defense, and their families, and also employees of the United States whose duties require them to reside in the District of Columbia, and whose services are essential to war needs, and their families, only during the continuation of the existing war, is hereby authorized and empowered, within the limits of the amounts herein authorized —

(a) To purchase, acquire by lease, construct, requisition, or acquire by condemnation or by gift such houses, buildings, furnishings, improvements, local transportation and other general community utilities and parts thereof as he may determine to be necessary for the proper conduct of the existing war.

(b) To purchase, lease, requisition, or acquire by condemnation or by gift any improved or unimproved land, or any right, title, or interest therein on which such houses, buildings, improvements, local transportation and other general community utilities and parts thereof have been or may be constructed: *Provided,* That colleges, museums, libraries, State or municipal buildings, and the furnishings in private dwellings shall not be acquired except by contract, nor shall any occupied dwelling or place of abode be taken under the powers in this Act given except by contract unless the necessity thereof shall be determined by a judge of the circuit or district court of the United States exercising jurisdiction in the locality on petition

setting forth the reason and necessity for such taking; the hearing on such petition shall be upon notice to the owner and occupant of such dwelling, and the determination of such judge shall be final, but in no event shall any occupied private dwelling house be taken except by contract unless such dwelling be upon lands desired for the construction of a Government structure: *Provided further*, That no existing limitation upon the right of any person to make a contract with the United States shall apply to owners whose property the President determines is necessary for Government purposes and desires to either lease or purchase by contract under this or any other Act authorizing the President to acquire property by lease or purchase.

(c) To equip, manage, maintain, alter, rent, lease, exchange, sell, and convey such lands, or any right, title, or interest therein, houses, buildings, improvements, local transportation and other general community utilities, parts thereof, and equipment upon such terms and conditions as he may determine: *Provided*, That no sale and conveyance shall be made hereunder on credit without reserving a first lien on such property for the unpaid purchase money: *Provided further*, That in no case shall any property hereby acquired be given away, nor shall rents be furnished free, but the rental charges shall be reasonable and just as between the employees and the Government.

(d) To aid in providing, equipping, managing, and maintaining houses, buildings, improvements, local transportation and other general community utilities by loan or otherwise to such person or persons and upon such terms and conditions as he may determine: *Provided*, That no loan shall be made at a less rate of interest than five per centum per annum, and such loan shall be properly secured by lien, mortgage, or otherwise: *And provided further*, That no loan shall be made and no house or money given under this Act to any person not an American citizen.

(e) To take possession of, alter, repair, improve, and suitably arrange for living purposes to be used under the terms of this Act all houses on square six hundred and thirty-three except the Maltby Building, owned by the United States, together with any other houses in the District of Columbia owned by the Government and not now occupied. The President shall, in the construction of buildings in the District of Columbia, make use of any lands owned by the Government of the United States deemed by him to be suitable for the purpose and which have not heretofore been dedicated by Act of Congress for specific buildings.

The President may exercise any power or discretion herein granted, and may enter into any arrangement or contract incidental thereto, through such agency or agencies as he may create or designate: *Provided*, That houses erected by the Government under the authority of this Act shall be of only a temporary character except where the interests of the Government will be best subserved by the erection of buildings of a permanent character: *Provided further*, That whenever it is practicable to use any part of the office or field force of the Office of the Supervising Architect of the Treasury Department in or about any of the work contemplated by this Act, the President shall do so. [— *Stat. L.* —.]

SEC. 2. [Compensation for property taken.] That whenever the President shall purchase, lease, requisition, or acquire by condemnation or by

gift such land or right, title, or interest therein, or such houses, buildings, furnishings, improvements, local transportation and other general community utilities, and parts thereof, he shall make just compensation therefor, to be determined by him, and if the amount thereof so determined is unsatisfactory to the person entitled to receive the same, such person shall be paid seventy-five per centum of the amount so determined and shall be entitled to sue the United States to recover such further sum as, added to such seventy-five per centum, will make up such amount as will be just compensation therefor in the manner provided for by section twenty-four, paragraph twenty, and section one hundred and forty-five of the Judicial Code. [— *Stat. L.* —.]

For Judicial Code, § 24, par. 20, see 1912 Supp. Fed. Stat. Ann. 140; 4 Fed. Stat. Ann. (2d ed.) 1059.

For Judicial Code, § 145, see 1912 Supp. Fed. Stat. Ann. 200; 5 Fed. Stat. Ann. (2d ed.) 649.

SEC. 3. [Possession of property pending condemnation proceedings.] That upon the requisition of or the filing of a petition for the condemnation hereunder of such land, or any right, title, or interest therein, or such houses, buildings, furnishings, improvements, local transportation, and other general community utilities, and parts thereof, immediate possession thereof may be taken to the extent of the interest to be acquired and the same may be occupied, occupant being given ten days' notice in which to vacate, and used, and the provisions of section three hundred and fifty-five of the Revised Statutes, providing that no public money shall be expended upon such land until the written opinion of the Attorney General shall be had in favor of the validity of the title, nor until the consent of the legislature of the State in which the land is located has been given, shall be, and the same are hereby, suspended as to all real estate acquired hereunder. [— *Stat. L.* —.]

For R. S. sec. 355, see 6 Fed. Stat. Ann. 696; 8 Fed. Stat. Ann. (2d ed.) 1105.

SEC. 4. ["Person" defined.] That the word "person" used herein shall include any person, trustee, firm, or corporation. [— *Stat. L.* —.]

SEC. 5. [Power and authority granted herein how long effective.] That the power and authority granted herein shall cease with the termination of the present war, except the power and authority to care for, sell, or rent such property as remains undisposed of and to conclude and execute contracts for the sale of property made during the war. Such property shall be sold as soon after the conclusion of the war as it can be advantageously done: *Provided*, That before any sale is consummated the same must be authorized by Congress. [— *Stat. L.* —.]

SEC. 6. [Report to Congress.] That at the beginning of each session of Congress the President shall make to Congress a full and detailed report covering all of the transactions with relation to the subject matter of this Act, describing each parcel of land purchased, leased, or otherwise acquired, the improvements made thereon, together with the amount of money spent in connection therewith and the disposition of the same; descriptions of all parcels of property sold, to whom, the terms of sale, and the status of the

title at the time of the making of such report; description of each piece of property purchased under the terms of this Act and still owned by the Government and the estimated value; a list showing the names of all persons who have been employed in any capacity to aid in carrying out the provisions of this Act, the service rendered by each and the amount of compensation, including fees, commissions, allowances, and traveling expenses paid to each, and a full, detailed, itemized statement showing each and every transaction in the execution of the trust herein created, and immediately after the declaration of peace the President shall make a final report to Congress covering in detail all the operations and transactions, under and by virtue of the terms of this Act. [— Stat. L. —.]

SEC. 7. [Contracts — conditions affecting.] That no work to be done or contract to be made under or by authority of any provision of this Act shall be done or made on or under a percentage or cost-plus percentage basis, nor shall any contract be let involving more than \$1,000 until at least three responsible competing contractors shall have been notified and considered in connection with such contract, and all contracts to be awarded to the lowest responsible bidder, the Government reserving the right to reject any and all bids. [— Stat. L. —, as amended by — Stat. L. —.]

This section was amended to read as here given by the Urgent Deficiencies Appropriation Act of June 4, 1918, ch. —. As originally enacted it was as follows:

"SEC. 7. That no work to be done or contract to be made under or by authority of any provision of this Act shall be done or made on or under a percentage or cost-plus percentage basis, nor shall any contract be let at least three responsible competing contractors shall have been notified and considered in connection with such contract, and all contracts to be awarded to the lowest responsible bidder, the Government reserving the right to reject any and all bids."

SEC. 8. [Appropriations — expenditures.] That for carrying out the provisions of this Act and for the administration thereof the sum of \$60,000,000, or so much thereof as may be necessary, is hereby authorized: *Provided*, That \$10,000,000, or so much thereof as may be necessary, of the amount hereby authorized shall be used only to build or acquire, as herein provided, housing accommodations within the District of Columbia for such Government employees as can not be used as advantageously in other cities in the service of the Government, of which the sum of \$75,000, or so much thereof as shall be necessary therefor, shall be used by the Superintendent of the United States Capitol Buildings and Grounds to convert the building known as the Maltby Building into an apartment house or for office purposes: *Provided further*, That the expenditure in the District of Columbia shall be made with a view to caring for the alley population of the District when the war is over, so far as it can be done without interfering with war housing purposes. [— Stat. L. —.]

This section is affected by the Deficiency Appropriation Act of July 8, 1918, ch. —, § 1. — Stat. L. —, which contains a provision as follows: "The authorization fixed by section eight of the Act entitled "An Act to authorize the President to provide housing for war needs," approved May sixteenth, nineteen hundred and eighteen, is increased from \$60,000,000 to \$100,000,000, and there is appropriated for the purposes thereof, including rental of offices in the District of Columbia, contingent and miscellaneous expenses, printing and binding, and personal services in the District of Columbia and elsewhere, \$40,000,000, to be expended in accordance with the authority and under the conditions prescribed in the said Act as amended by the Deficiency Appropriation Act approved June fourth, nineteen hundred and eighteen and to continue available during the fiscal year nineteen hundred and nineteen."

[Creation of corporation to carry out purpose of "Housing Act."] The President, if in his judgment such action is deemed necessary or advantageous, may authorize the creation of a corporation or corporations for the purpose of carrying out the Act entitled "An act to authorize the President to provide housing for war needs," approved May sixteenth, nineteen hundred and eighteen, such corporation or corporations to have or obtain all powers necessary or appropriate therefor. The total capital stock of the corporation or corporations authorized hereunder shall not exceed \$60,000,000: *Provided*, That where such corporation or corporations are created by authority of the President, representatives appointed by the President, or by such agency as he may designate to carry out the purposes of the said Act, shall subscribe to, own, and vote the capital stock thereof for and on behalf of the United States, and shall do all other things in regard thereto necessary to protect the interests of the United States and to carry out the provisions of the said Act: *Provided further*, That section six hundred and five of the Code of the District of Columbia prohibiting a corporation from buying, selling or dealing in real estate shall not apply to such corporation or corporations so created or designated, with respect to buying, selling or dealing in real estate in furtherance of the provisions of the said Act: *Provided further*, That the Act entitled "An Act to amend section five hundred and fifty-two of the Code of Laws for the District of Columbia, relating to incorporations," approved February fourth, nineteen hundred and five, shall not apply to any corporation or corporations created under the authority contained in this paragraph.

All moneys received by the United States in carrying out the Act entitled "An Act to authorize the President to provide housing for war needs," approved May sixteenth, nineteen hundred and eighteen, may be used as a revolving fund until June thirtieth, nineteen hundred and nineteen, for further carrying out the purposes of the said Act. [— *Stat. L.* —.]

This is from the Urgent Deficiencies Appropriation Act of June 4, 1918, ch. —.

V. WAR EMERGENCY SERVICES

[SEC. 1.] [War emergency services — wages — appropriations for payment.] * * * That no money now or hereafter appropriated for the payment of wages not fixed by statute shall be available to pay wages in excess of the standard determined upon by the War Labor Policies Board. [— *Stat. L.* —.]

This is from the Sundry Civil Appropriation Act of July 1, 1918, ch. —.

LABOR DEPARTMENT

Act of July 3, 1918, ch. —, 447.

Sec. 1. Advertisements for Proposals — Exceptions, 447.

[SEC. 1.] [Advertisements for proposals — exceptions.] * * * During the present war section thirty-seven hundred and nine of the Revised Statutes of the United States shall not be construed to apply to any purchase or service rendered for the Department of Labor when the aggregate amount involved does not exceed the sum of \$25. [— *Stat. L.* —.]

This is from the Legislative, Executive, and Judicial Appropriation Act of July 3, 1918, ch. —.

For R. S. sec. 3709, relating to advertisements for proposals for contracts for supplies and services, see 6 Fed. Stat. Ann. 93; 8 Fed. Stat. Ann. (2d ed.) 336.

LEPROSY

See HEALTH AND QUARANTINE

LIBERTY BONDS

See PUBLIC DEBT

LIGHTS AND BUOYS

Act of Aug. 29, 1916, ch. 417, 448.

Transfer of Vessels, etc., to Army or Navy in Emergencies — Personnel Subject to Army or Navy Rules During Transfer, 448.

/ Regulations for Service in Time of War, 448.

Act of Aug. 28, 1916, ch. 414, 448.

Sec. 2. Lighthouse Service — Exchange of Right of Way, 448

5. Light Keepers — Medical Relief, 449.

Act of June 20, 1918, ch. —, 449.

Sec. 2. Teachers — Payment of Expenses, 449.

3. Keepers and Assistant Keepers — Ration — Commutation, 449.

4. Publications — Sale, 449.

5. Post Lantern Lights, etc. — Establishment, 449.

6. Officers and Employees — Retirement — Pay, 450.

7. Superintendents — Assignment — Salary — Lighthouse Inspectors Transferred to Positions of Superintendents — Mississippi River District, 450.

8. Compensation of Lighthouse Keepers — R. S. 4673 Amended, 450.

[Transfer of vessels, etc., to Army or Navy in emergencies — personnel subject to Army or Navy rules during transfer.] The President is hereby authorized, whenever in his judgment a sufficient national emergency exists, to transfer to the service and jurisdiction of the Navy Department, or of the War Department, such vessels, equipment, stations, and personnel of the Lighthouse Service as he may deem to the best interest of the country, and after such transfer all expenses connected therewith shall be defrayed out of the appropriations for the department to which transfer is made: *Provided*, That such vessels, equipment, stations, and personnel shall be returned to the Lighthouse Service when such national emergency ceases in the opinion of the President, and nothing in this Act shall be construed as transferring the Lighthouse Service or any of its functions from the Department of Commerce except in time of national emergency and to the extent herein provided: *Provided further*, That any of the personnel of the Lighthouse Service who may be transferred as herein provided shall, while under the jurisdiction of the Navy Department or War Department, be subject to the laws, regulations, and orders for the government of the Navy or Army, as the case may be, in so far as the same may be applicable to persons whose retention permanently in the military service of the United States is not contemplated by law. [39 Stat. L. 602.]

This and the following paragraph of the text are from the Naval Appropriation Act of Aug. 29, 1916, ch. 417.

[Regulations for service in time of war.] The Secretary of the Navy, the Secretary of War, and the Secretary of Commerce shall jointly prescribe regulations governing the duties to be performed by the Lighthouse Service in time of war, and for the cooperation of that service with the Navy and War Departments in time of peace in preparation for its duties in war, and this may include arrangements for a direct line of communication between the officers or bureaus of the Navy and War Departments and the Bureau of Lighthouses to provide for immediate action on all communications from these departments. [39 Stat. L. 602.]

See the notes to the preceding paragraph of the text.

SEC. 2. [Lighthouse service — exchange of right of way.] That hereafter the Secretary of Commerce is authorized, whenever he shall deem it advisable, to exchange any right of way of the United States in connection with lands pertaining to the Lighthouse Service for such other right of way as may be advantageous to the service, under such terms and conditions as he may deem to be for the best interests of the Government; and in case any expenses, not exceeding the sum of \$500, are incurred by the United States in making such exchange, the same shall be payable from the appropriation "General expenses, Lighthouse Service," for the fiscal year during which such exchange shall be effected. [39 Stat. L. 538.]

The foregoing section 2, and the following section 5, are from an Act of Aug. 28, 1916, ch. 414, entitled "An Act To authorize aids to navigation and for other works in the Lighthouse Service, and for other purposes."

Sections 1, 3, 4, and 6 of this Act, being of a local or temporary nature only, are omitted.

SEC. 5. [Light keepers — medical relief.] That hereafter light keepers and assistant light keepers of the Lighthouse Service shall be entitled to medical relief without charge at hospitals and other stations of the Public Health Service under the rules and regulations governing the care of seamen of the merchant marine: *Provided*, That this benefit shall not apply to any keeper or assistant keeper who receives an original appointment after the passage of this Act, unless the applicant passes a physical examination in accordance with rules approved by the Secretary of Commerce and the Secretary of the Treasury. [39 Stat. L. 538.]

See the note to the preceding section 2 of this Act.

SEC. 2. [Teachers — payment of expenses.] That hereafter the appropriation, "General expenses, Lighthouse Service," shall be available, under regulations prescribed by the Secretary of Commerce, for the payment of traveling and subsistence expenses of teachers while actually employed by States or private persons to instruct the children of keepers of lighthouses. [— Stat. L. —.]

The foregoing section 2 and the following sections 3-8 are from the Act of June 20, 1918, ch. —, entitled "An Act To authorize aids to navigation and for other works in the Lighthouse Service, and for other purposes."

Section 1 of this Act made appropriations and is omitted as local only.

SEC. 3. [Keepers and assistant keepers — ration — commutation.] That hereafter every lighthouse keeper and assistant lighthouse keeper in the Lighthouse Service of the United States shall be entitled to receive one ration per day, or, in the discretion of the Commissioner of Lighthouses, commutation therefor at the rate of 45 cents per ration. [— Stat. L. —.]

See the note to the preceding section 2 of this Act.

A provision similar to this section, but without the word "hereafter" was contained in the Sundry Civil Appropriation Act of July 1, 1918, ch. —, § 1, — Stat. L. —, as follows: "Every lighthouse keeper and assistant lighthouse keeper in the Lighthouse Service of the United States shall be entitled to receive one ration per day, or, in the discretion of the Commissioner of Lighthouses, commutation therefor at the rate of 45 cents per ration."

SEC. 4. [Publications — sale.] That hereafter the Secretary of Commerce is authorized to provide under regulations to be prescribed by him, for the sale of publications of the Bureau of Lighthouses and the Lighthouse Service, including the allowance of a commission for such sales. [— Stat. L. —.]

See the note to section 2 of this Act. *supra*, this page.

SEC. 5. [Post lantern lights, etc.— establishment.] That hereafter post lantern lights and other aids to navigation may be established and maintained, in the discretion of the Commissioner of Lighthouses, out of the annual appropriations for the Lighthouse Service, on Lakes Union and Washington, in the State of Washington. [— Stat. L. —.]

See the note to section 2 of this Act, *supra*, this page.

SEC. 6. [Officers and employees — retirement — pay.] That hereafter all officers and employees engaged in the field service or on vessels of the Lighthouse Service, except persons continuously employed in district offices or shops, who shall have reached the age of sixty-five years, after having been thirty years in the active service of the Government, may at their option be retired from further performance of duty; and all such officers and employees who shall have reached the age of seventy years shall be compulsorily retired from further performance of duty: *Provided*, That the annual compensation of persons so retired shall be a sum equal to one-fortieth of the average annual pay received for the last five years of service for each year of active service in the Lighthouse Service or in a department or branch of the Government having a retirement system, not to exceed in any case thirty-fortieths of such average annual pay received: *Provided further*, That such retirement pay shall not include any amount on account of subsistence or other allowance. [— *Stat. L.* —.]

See the note to section 2 of this Act, *supra*, p. 449.

SEC. 7. [Superintendents — assignment — salary — lighthouse inspectors transferred to positions of superintendents — Mississippi River district.] That hereafter a superintendent of lighthouses shall be assigned in charge of each lighthouse district at an annual salary of not exceeding \$3,000 each, except that the salary of the third lighthouse district shall remain at \$3,600, as now fixed by law: *Provided*, That officers now designated as lighthouse inspectors shall be transferred to the positions of superintendent of lighthouses herein authorized in lieu of lighthouse inspectors: *Provided further*, That in the districts which include the Mississippi River and its tributaries the President may designate Army engineers to perform the duties of and act as superintendent of lighthouses without additional compensation. [— *Stat. L.* —.]

See the note to section 2 of this Act, *supra*, p. 449.

SEC. 8. [Compensation of lighthouse keepers — R. S. sec. 4673, amended.] That section forty-six hundred and seventy-three of the Revised Statutes of the United States be amended to read as follows:

"Sec. 4673. The Secretary of Commerce is authorized to regulate the salaries of the respective keepers of lighthouses in such manner as he deems just and proper, but the whole sum allowed for such salaries shall not exceed an average of \$840 per annum for each keeper; and the authority herein granted to regulate the salaries of keepers of lighthouses shall not be abridged or limited by the provisions of section seven of the general deficiency appropriation Act approved August twenty-sixth, nineteen hundred and twelve, as amended by section four of the legislative, executive, and judicial appropriation Act approved March fourth, nineteen hundred and thirteen." (United States Statutes at Large, volume thirty-seven, page seven hundred ninety.) [— *Stat. L.* —.]

See the note to section 2 of this Act, *supra*, p. 449.

For R. S. sec. 4673, amended by the text, see 4 Fed. Stat. Ann. 834; 6 Fed. Stat. Ann. (2d ed.) 319.

For the Deficiencies Appropriation Act of Aug. 26, 1912, ch. 408, § 7, as amended by the Act of March 4, 1913, ch. 142, see 1914 Supp. Fed. Stat. Ann. 140; 3 Fed. Stat. Ann. (2d ed.) 154.

MAIL

See POSTAL SERVICE

MARINE CORPS

See NAVY; POSTAL SERVICE

MARSHALS

See JUDICIARY

MASTER AND SERVANT

See LABOR; RAILROADS

MEDAL OF HONOR ROLL

See PENSIONS

MILITARY ACADEMY

Act of May 4, 1916, ch. 110, 452.

Sec. 1. Cadets — Increase in Number — Residence Qualifications — Successor to Cadet — Former Act Repealed, 452.

2. Enlisted Men — Appointment to Cadetship, 452.

3. Annual Increments, 452.

Act of Aug. 11, 1916, ch. 314, 453.

Sec. 1. Professors — Rank, Pay and Allowances, 453.

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An Act To provide for an increase in the number of cadets at the United States Military Academy.

[Act of May 4, 1916, ch. 110, 39 Stat. L. 62.]

[SEC. 1.] [Cadets — increase in number — residence qualifications — successor to cadet — former act repealed.] That the Corps of Cadets at the United States Military Academy shall hereafter consist of two for each congressional district, two from each Territory, four from the District of Columbia, two from natives of Porto Rico, four from each State at large, and eighty from the United States at large, twenty of whom shall be selected from among the honor graduates of educational institutions having officers of the Regular Army detailed as professors of military science and tactics under existing law or any law hereafter enacted for the detail of officers of the Regular Army to such institutions, and which institutions are designated as "honor schools" upon the determination of their relative standing at the last preceding annual inspection regularly made by the War Department. They shall be appointed by the President and shall, with the exception of the eighty appointed from the United States at large, be actual residents of the congressional or Territorial district, or of the District of Columbia, or of the island of Porto Rico, or of the States, respectively, from which they purport to be appointed: *Provided*, That so much of the Act of Congress approved March fourth, nineteen hundred and fifteen (Thirty-eighth Statutes at Large, page eleven hundred and twenty-eight), as provides for the admission of a successor to any cadet who shall have finished three years of his course at the academy be, and the same is hereby, repealed: *Provided further*, That the appointment of each member of the present Corps of Cadets is validated and confirmed. [39 Stat. 62.]

For the provisions of the Act of March 4, 1915, ch. 146, § 1, repealed by this section, see 1916 Supp. Fed. Stat. Ann. 147; 6 Fed. Stat. Ann. (2d ed.) 426, note.

This section was in part superseded by the Act of July 9, 1918, ch. —, *infra*, p. 455.

SEC. 2. [Enlisted men — appointment to cadetship.] That the President is hereby authorized to appoint cadets to the United States Military Academy from among enlisted men in number as nearly equal as practicable of the Regular Army and the National Guard between the ages of nineteen and twenty-two years who have served as enlisted men not less than one year, to be selected under such regulations as the President may prescribe: *Provided*, That the total number so selected shall not exceed one hundred and eighty at any one time. [39 Stat. L. 62.]

SEC. 3. [Annual increments.] That, under such regulations as the President shall prescribe, the increase in the number of cadets provided for by this Act shall be divided into four annual increments, which shall be as nearly equal as practicable and be equitably distributed among the sources from which appointments are authorized. [39 Stat. L. 62.]

[Sec. 1.] [Professors—rank, pay and allowances.] * * * That any officer of the United States Army now holding the position of permanent professor at the United States Military Academy who on July first, nineteen hundred and sixteen, should have served not less than thirty-three years in the Army, one-third of which service shall have been as professor and instructor at the Military Academy, shall on that date have the rank, pay, and allowances of a colonel in the Army. [39 Stat. L. 493.]

The provisions of this and the four paragraphs following are from the Military Academy Appropriation Act of Aug. 11, 1916, ch. 314.

[Cadets—deficiency in studies—reexamination—eligibility of deficient cadets to army appointments.] * * * That whenever a cadet shall fail to pass any required examination because deficient in any one subject of instruction he shall have the right to apply for a second examination regarding such subject by making written application therefor to the Academic Board within ten days after being officially notified of such failure. The examination demanded shall be held within sixty days from the date of such application, and if the cadet being otherwise qualified shall pass the same by compliance with the requirements existing at the time of the first examination, he shall be readmitted to the academy: *Provided further*, That this proviso shall apply to those former cadets who failed in not more than two subjects during the current year who shall make application for such examination within twenty days after the approval of this Act: *Provided further*, That any cadet who fails to pass any required examination shall have no more than one reexamination: *And provided further*, That nothing contained in section thirteen hundred and twenty-five of the Revised Statutes shall render ineligible any former cadet honorably discharged from the Military Academy for deficiency in studies, if otherwise qualified, as a civilian candidate for appointment to any vacancy in the grade of second lieutenant under class six of the national-defense Act approved June third, nineteen hundred and sixteen. [39 Stat. L. 493.]

See the note to the preceding paragraph of the text.

For R. S. sec. 1325, mentioned in this paragraph, see 4 Fed. Stat. Ann. 882; 6 Fed. Stat. Ann. (2d ed.) 409.

The provisions relating to the appointments of civilians to vacancies in the grade of second lieutenant under class six of the National Defense Act of June 3, 1916, ch. 134, § 24, mentioned in the text, are given under the title WAR DEPARTMENT AND MILITARY ESTABLISHMENT, *post*.

[Filipino cadets—designation.] * * * That the four Filipino cadets authorized by the Act of May twenty-eighth, nineteen hundred and eight, to be designated by the Philippine Commission to receive instructions at the United States Military Academy, shall hereafter be designated by the Governor General of the Philippine Islands. [39 Stat. L. 493.]

See the note to the first paragraph of this Act, *supra*, this page.

For the Act of May 28, 1908, ch. 214, mentioned in the text, see 1909 Supp. Fed. Stat. Ann. 441; 6 Fed. Stat. Ann. (2d ed.) 423.

[Chapel organist and choirmaster—public quarters.] * * * That hereafter the chapel organist and choirmaster shall be entitled to public

quarters when available and to the same allowances with respect to fuel and light as those of a second lieutenant when occupying public quarters. [39 Stat. L. 497.]

See the note to the first paragraph of this section, *supra*, p. 453.

[Disbursing officer — payments.] * * * That hereafter in settling transactions between appropriations for the support of the United States Military Academy and other bureaus of the War Department, or between the United States Military Academy and any other executive department of the Government, payment therefor shall be made by the disbursing officer of the United States Military Academy or of the office, bureau, or department concerned. [39 Stat. L. 504.]

See the note to the first paragraph of this section, *supra*, p. 453.

[Battalion sergeant major — United States Corps of Cadets.] * * * For pay of one battalion sergeant major, Infantry, \$864: *Provided*, That the enlisted man in the headquarters, United States Corps of Cadets, performing that duty has the rank, pay, and allowances of that grade: *And provided further*, That if performing the above duties at time of retirement the said enlisted man shall be retired with the rank, pay, and allowances of a retired sergeant major, Infantry. [— Stat. L. —.]

This and the four paragraphs of the text following are from the Military Academy Appropriation Act of June 27, 1918, ch. ____.

[Battalion sergeant major — headquarters military academy.] * * * For pay of one battalion sergeant major, Infantry, \$768: *Provided*, That the enlisted man at headquarters, United States Military Academy, performing that duty shall have the rank, pay, and allowance of that grade. [— Stat. L. —.]

See the note to the preceding paragraph of the text.

[Military Academy Band — R. S. sec. 1111 amended.] * * * That section eleven hundred and eleven of the Revised Statutes, as amended, be amended to read as follows: The Military Academy Band shall hereafter consist of one teacher of music, who shall be the leader of the band, one enlisted band sergeant and assistant leader, and of fifty enlisted musicians. The teacher of music shall receive the pay and have the rank of a first lieutenant, not mounted; the enlisted band sergeant and assistant leader shall receive \$972 per year; and of the enlisted musicians of the band, fifteen shall each receive \$51 per month, fifteen shall receive \$44 per month, and the remaining twenty shall each receive \$38 per month, and each of the aforesaid enlisted men shall also be entitled to the clothing, fuel, rations, and other allowances of musicians of the Regular Army; and the said teacher of music, the band sergeant and assistant leader, and the enlisted musicians of the band shall be entitled to the same benefits in

respect to pay, emoluments, and retirement arising from longevity, reenlistment, and length of service as are, or may hereafter become, applicable to other officers or enlisted men of the Army. [— *Stat. L.* —.]

See the note to the first paragraph of this Act, *supra*, p. 454.
For R. S. sec. 1111, amended by the text, see 7 Fed. Stat. Ann. 957; 6 Fed. Stat. Ann. (2d ed.) 412.

[Supplies — purchase.] That all technical and scientific supplies for the departments of instruction of the Military Academy shall be purchased by contract or otherwise, as the Secretary of War may deem best. [— *Stat. L.* —.]

See the note to the first paragraph of this Act, *supra*, p. 454.
This provision has appeared in the Military Academy Appropriation Acts for many years.

[Printing.] * * * Hereafter printing, binding, and blank books required for the use of the United States Military Academy may be done or procured elsewhere than at the Government Printing Office when in the opinion of the Secretary of War such work can be more advantageously done or procured locally, the cost thereof to be paid from the proper appropriation or appropriations made for the Military Academy. [— *Stat. L.* —.]

See the note to the first paragraph of this Act, *supra*, p. 454.

[Cadets — number — appointment.] Appointments of cadets, Military Academy: That the Corps of Cadets of the United States Military Academy shall hereafter consist of two from each congressional district, two from each Territory, four from the District of Columbia, two from natives of Porto Rico, four from each State at large, and eighty-two from the United States at large, twenty of whom shall be selected from among the honor graduates of educational institutions having officers of the Regular Army detailed as professors of military science and tactics under existing law or any law hereafter enacted for the detail of officers of the Regular Army to such institutions, and which institutions are designated as "honor schools," upon the determination of their relative standing at the last preceding annual inspection regularly made by the War Department, and two of whom shall be selected from persons recommended by the Vice President. They shall be appointed by the President and shall, with exception of the eighty-two appointed from the United States at large, be actual residents of the congressional or territorial district, or of the District of Columbia, or of the Island of Porto Rico, or of the States, respectively, from which they purport to be appointed. [— *Stat. L.* —.]

This paragraph constitutes chapter XXII of the Army Appropriation Act of July 9, 1918, ch. —, and supersedes in part the Act of May 4, 1916, ch. 110, § 1, *supra*, p. 452.

MILITARY RESERVATIONS

See PUBLIC LANDS.

MILITIA

Act of Jan. 26, 1918, ch. —, 456.

Philippine Militia — Mobilization — Pay and Allowances, 456.

Act of July 1, 1918, ch. —, 456.

Naval Militia — National Naval Volunteers — Transfer to Naval Reserve or Marine Corps Reserve, 456.

Division of Naval Militia Affairs — Clerical Force and Expenses — Transfer to Bureau of Navigation, 457.

Act of July 9, 1918, ch. —, 457.

National Guard — Appropriations — Disbursements, 457.

National Guard — Composition, 457.

Longevity Pay for Men Other than the Regular Army — Members of National Guard and Organized Militia in Federal Service — Longevity Pay, 457.

Property Officers for Property of National Guard — National Defense Act, Sec. 67, Amended, 458.

An Act To authorize the calling into the service of the United States the militia and other locally created armed forces in the Philippine Islands, and for other purposes.

[*Act of Jan. 26, 1918, ch. —, — Stat. L. —.*]

[**Philippine Militia — mobilization — pay and allowances.**] That the militia and other locally created armed forces in the Philippine Islands may be called into the service of the United States, and all members thereof may be drafted into said service and organized in such manner as is or may be provided by law for calling or drafting the National Guard into said service, and shall in all respects while therein be upon the same footing with members of the National Guard so called or drafted: *Provided*, That the pay and allowances of officers and men of the Philippine Militia and other locally created armed forces in the Philippine Islands called into the service of the United States under the provisions of this Act when serving in the Philippine Islands shall in no case exceed the pay and allowances for corresponding grades of Philippine Scouts. [*— Stat. L. —.*]

[**Naval Militia — National Naval Volunteers — transfer to Naval Reserve or Marine Corps Reserve.**] That upon the approval of this Act all laws heretofore enacted by the Congress relating to the Naval Militia and the National Naval Volunteers be, and the same hereby are, repealed; and the President is authorized to transfer as a class all members of the National Naval Volunteers to the class "the Naval Reserve," "the Naval Reserve Flying Corps," or "the Marine Corps Reserve" of the Naval Reserve Force or the Marine Corps Reserve, for general service, in the confirmed rank, grade, or rating they now hold in the National Naval Volunteers, regardless of their being members of a State military force, and without examination and the necessity of executing or filing a new oath and acceptance of office; that until such transfer is effected members of the National Naval Volunteers shall retain their present status and be

entitled to receive the same pay, allowances, gratuities, and other benefits as heretofore provided by law, and shall continue subject to the laws prescribed for the government of the Navy; that all members of the Naval Reserve Force shall be eligible for reenrollment in the rank, grade, or rating held on the termination of their last enrollment; that no enrollments or promotions shall be made in any rank or grade above that of lieutenant commander, except as herein otherwise provided. [— *Stat. L.* —.]

This and the following paragraph of the text are from the Naval Appropriation Act of July 1, 1918, ch. ____.

For the provisions relating to the Naval Militia and the National Naval Volunteers repealed by the text, see 6 Fed. Stat. Ann. (2d ed.) 425.

[Division of Naval Militia Affairs — clerical force and expenses — transfer to Bureau of Navigation.] That the clerical force and office expenses provided for the Division of Naval Militia Affairs shall be transferred to the Bureau of Navigation. [— *Stat. L.* —.]

See the note to the preceding paragraph of the text.

[National Guard — appropriations — disbursement.] * * * All the money hereinbefore appropriated for arming, equipping, and training the National Guard shall be disbursed and accounted for as such and for that purpose shall constitute one fund. [— *Stat. L.* —.]

This and the three paragraphs of the text following are from the Army Appropriation Act of July 9, 1918, ch. ____.

[National Guard — composition.] * * * That the National Guard of any State, Territory, or the District of Columbia shall include such officers and enlisted men of the staff corps and departments, corresponding to those of the Regular Army, as may be authorized by the Secretary of War. [— *Stat. L.* —.]

See the note to the preceding paragraph of the text.

[Longevity pay for men other than the Regular Army — members of National Guard and Organized Militia in Federal Service — longevity pay.] * * * That officers and enlisted men of the forces of the Army of the United States other than the Regular Army who have had service in the National Guard and Organized Militia of any State, Territory, or District, but who have entered the service in the forces of the Army of the United States, otherwise than through draft under the provisions of section one hundred and eleven of the Act of June third, nineteen hundred and sixteen, known as the national defense Act, shall be upon the same footing as to pay and allowance as the members of said forces who were drafted under the provisions of said section. [— *Stat. L.* —.]

See the note to the second preceding paragraph of the text.

For the Act of June 3, 1916, ch. 134, § 111, mentioned in the text, see 6 Fed. Stat. Ann. (2d ed.) 444.

[Property officers for property of National Guard — National Defense Act, sec. 67, amended.] * * * That the first sentence of the third paragraph of section sixty-seven of an Act entitled "An Act for making further and more effectual provision for the national defense, and for other purposes," approved June third, nineteen hundred and sixteen, be, and the same is hereby, amended to read as follows:

"The governor of each State and Territory and the Commanding General of the National Guard of the District of Columbia shall appoint, designate, or detail, subject to the approval of the Secretary of War, the Adjutant General or an officer of the National Guard of the State, Territory, or District of Columbia, who shall be regarded as property and disbursing officer of the United States." [— *Stat. L.* —.]

See the note to the first paragraph of this Act *supra*, p. 457. This paragraph is a part of ch. IV of the Army Appropriation Act of July 9, 1918, ch. —.

For the Act of June 3, 1916, ch. 134, § 67, amended by the text, see 6 Fed. Stat. Ann. (2d ed.) 463.

MINERAL LANDS, MINES, AND MINING

Act of July 1, 1916, ch. 209, 459.

Sec. 1. Bureau of Mines — Absence of Director — Duties by Whom Performed, 459.

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Act of July 1, 1918, ch. —, 465.

Sec. 1. Supplies, etc., for Bureau of Mines, 465.

Platinum, iridium, and palladium and compounds thereof — Statutes and Regulations Affecting, 465.

[**SEC. 1. [Bureau of Mines — absence of director — duties by whom performed.]** * * * Hereafter in the absence of the Director of the Bureau of Mines the assistant director of said bureau shall perform the duties of the director during the latter's absence, and in the absence of the Director and of the Assistant Director of the Bureau of Mines the Secretary of the Interior may designate some officer of said bureau to perform the duties of the director during his absence. [39 Stat. L. 303.]

This is from the Sundry Civil Appropriation Act of July 1, 1916, ch. 209.

For provisions relating to the powers and duties of the Director of the Bureau of Mines with respect of explosives, see **EXPLOSIVES**, *ante*, p. 178.

SEC. 24. [Spokane Reservation — unallotted mineral lands — leases.]

* * * The Secretary of the Interior is authorized and directed to lease

to citizens of the United States for mining purposes unallotted mineral lands on the diminished Spokane Reservation in the State of Washington for periods of twenty-five years with privileges of renewal, on such reasonable renewal conditions as may be determined by the Secretary of the Interior, and also with reasonable conditions to be fixed by the Secretary of the Interior providing for the prosecution of mining development and operation. Such leases shall be made to applicants in the order in which applications shall be made. Free opportunity shall be given for prospecting of the said lands, and rental shall be based upon mining production, and shall be reasonable, and the proceeds of rental shall be paid into the Spokane Indian tribal fund. [39 Stat. L. 155.]

This is a part of section 24 of the Indian Appropriation Act of May 18, 1916, ch. 125.

Joint Resolution To relieve the owners of mining claims who have been mustered into the military or naval service of the United States as officers or enlisted men from performing assessment work during the term of such service.

[*Res. of July 17, 1917, No. 10, — Stat. L. —.*]

[**Mining claims — assessment work — owners in military or naval service.**] That the provisions of section twenty-three hundred and twenty-four of the Revised Statutes of the United States, which require that on each mining claim located after the tenth day of May, eighteen hundred and seventy-two, and until patent has been issued therefor, not less than \$100 worth of labor shall be performed or improvements made during each year, shall not apply to claims or parts of claims owned by officers or enlisted men who have been or may, during the present war with Germany, be mustered into the military or naval service of the United States to serve during their enlistment in the war with Germany, so that no mining claim or any part thereof owned by such person which has been regularly located and recorded shall be subject to forfeiture for nonperformance of the annual assessments during the period of his service or until six months after such owner is mustered out of the service or until six months after his death in the service: *Provided*, That the claimant of any mining location, in order to obtain the benefits of this resolution, shall file, or cause to be filed, a notice in the office where the location notice or certificate is recorded, before the expiration of the assessment year during which he is so mustered, giving notice of his muster into the service of the United States and of his desire to hold said mining claim under this resolution. [*— Stat. L. —.*]

For R. S. sec. 2324, mentioned in the text, see 6 Fed. Stat. Ann. 19; 6 Fed. Stat. Ann. (2d ed.) 533.

See the following paragraph of the text.

Joint Resolution To suspend the requirements of annual assessment work on mining claims during the years nineteen hundred and seventeen and nineteen hundred and eighteen.

[*Res. of Oct. 5, 1917, — —, — Stat. L. —.*]

[**Mining claims — assessment work — suspension.**] That in order that labor may be most effectively used in raising and producing those things needed in the prosecution of the present war with Germany, that the provision of section twenty-three hundred and twenty-four of the Revised Statutes of the United States which requires on each mining claim located, and until a patent has been issued therefor, not less than \$100 worth of labor to be performed or improvements to be made during each year, be, and the same is hereby, suspended during the years nineteen hundred and seventeen and nineteen hundred and eighteen: *Provided*, That every claimant of any such mining claim in order to obtain the benefits of this resolution shall file or cause to be filed in the office where the location notice or certificate is recorded on or before December thirty-first, of each of the years nineteen hundred and seventeen and nineteen hundred and eighteen, a notice of his desire to hold said mining claim under this resolution: *Provided further*, That this resolution shall not apply to oil placer locations or claims.

This resolution shall not be deemed to amend or repeal the public resolution entitled "Joint resolution to relieve the owners of mining claims who have been mustered into the military or naval service of the United States as officers or enlisted men from performing assessment work during the term of such service," approved July seventeenth, nineteen hundred and seventeen. [*— Stat. L. —.*]

For R. S. sec. 2324, mentioned in the text, see 5 Fed. Stat. Ann. 19; 6 Fed. Stat. Ann. (2d ed.) 533.

The Res. of July 17, 1917, No. 10, mentioned in the text, is given in the preceding paragraph of the text.

An Act To authorize exploration for and disposition of potassium.

[*Act of Oct. 2, 1917, ch. —, — Stat. L. —.*]

[**SEC. 1.**] [**Public lands containing potassium — permit to prospect.**] That the Secretary of the Interior is hereby authorized and directed, under such rules and regulations as he may prescribe, to issue to any applicant who is a citizen of the United States, an association of such citizens, or a corporation organized under the laws of any State or Territory thereof, a prospecting permit which shall give the exclusive right, for a period not exceeding two years, to prospect for chlorides, sulphates, carbonates, borates, silicates, or nitrates of potassium on public lands of the United States, except lands in and adjacent to Searles Lake, which would be described if surveyed as townships twenty-four, twenty-five, twenty-six, and twenty-seven south of ranges forty-two, forty-three, and forty-four east. Mount Diablo meridian, California: *Provided*, That the area to be included

in such permit shall not exceed two thousand five hundred and sixty acres of land in reasonably compact form. [— *Stat. L.* —.]

SEC. 2. [Patents — leases.] That upon showing to the satisfaction of the Secretary of the Interior that valuable deposits of one or more of the substances enumerated in section one hereof have been discovered by the permittee within the area covered by his permit, the permittee shall be entitled to a patent for not to exceed one-fourth of the land embraced in the prospecting permit, to be taken in compact form and described by legal subdivisions of the public-land surveys, or if the land be not surveyed, then in tracts which shall not exceed two miles in length, by survey executed at the cost of the permittee, in accordance with rules and regulations prescribed by the Secretary of the Interior. All other lands described and embraced in such a prospecting permit from and after the exercise of the right to patent accorded to the discoverer, and not covered by leases, may be leased by the Secretary of the Interior, through advertisement, competitive bidding, or such other methods as he may by general regulations adopt, and in such areas as he shall fix, not exceeding two thousand five hundred and sixty acres, all leases to be conditioned upon the payment by the lessee of such royalty as may be specified in the lease and which shall be fixed by the Secretary of the Interior in advance of offering the same, and which shall not be less than two per centum on the gross value of the output at the point of shipment, which royalty, on demand of the Secretary of the Interior, shall be paid in the product of such lease, and the payment in advance of a rental, which shall be not less than 25 cents per acre for the first year thereafter; not less than 50 cents per acre for the second, third, fourth, and fifth years, respectively; and not less than \$1 per acre for each and every year thereafter during the continuance of the lease, except that such rental for any year shall be credited against the royalties as they accrue for that year. Leases shall be for indeterminate periods, upon condition that at the end of each twenty-year period succeeding the date of any lease such readjustment of terms and conditions may be made as the Secretary of the Interior may determine, unless otherwise provided by law at the time of the expiration of such periods, and a patentee under this section may also be a lessee: *Provided*, That the potash deposits in the public lands in and adjacent to Searles Lake in what would be if surveyed townships twenty-four, twenty-five, twenty-six, and twenty-seven south of ranges forty-two, forty-three, and forty-four, east, Mount Diablo meridian, California, may be operated by the United States or may be leased by the Secretary of the Interior under the terms and provisions of this Act: *Provided further*, That the Secretary of the Interior may issue leases under the provisions of this Act for deposits of potash in public lands in Sweetwater County, Wyoming, also containing deposits of coal, on condition that the coal be reserved to the United States. [— *Stat. L.* —.]

SEC. 3. [Nonmineral lands for camp sites, refining works, etc.] That in addition to areas of such mineral land to be included in prospecting permits or leases the Secretary of the Interior, in his discretion, may issue to a permittee or lessee under this Act the exclusive right to use, during the life of

the permit or lease, a tract of unoccupied nonmineral public land not exceeding forty acres in area for camp sites, refining works, and other purposes connected with and necessary to the proper development and use of the deposits covered by the permit or lease. [— *Stat. L.* —.]

SEC. 4. [Cancellation of permits or licenses.] That the Secretary of the Interior shall reserve the authority and shall insert in any preliminary permit issued under section one hereof appropriate provisions for its cancellation by him upon failure by the permittee or licensee to exercise due diligence in the prosecution of the prospecting work in accordance with the terms and conditions stated in the permit. [— *Stat. L.* —.]

SEC. 5. [Excess holdings prohibited — forfeiture of lease or interest.] That no person shall take or hold any interest or interests as a member of an association or associations or as a stockholder of a corporation or corporations holding a lease under the provisions hereof which, together with the area embraced in any direct holding or lease under this Act, or which, together with any other interest or interests as a member of an association or associations or as a stockholder of a corporation or corporations holding a lease under the provisions hereof, or otherwise, exceeds in the aggregate in any area fifty miles square an amount equivalent to the maximum number of acres allowed to any one lessee under this Act; that no person, association, or corporation holding a lease under the provisions of this Act shall hold more than a tenth interest, direct or indirect, in any other agency, corporate or otherwise, engaged in the sale or resale of the products obtained from such lease; and any violation of the provisions of this section shall be ground for the forfeiture of the lease or interest so held; and the interest held in violation of this provision shall be forfeited to the United States by appropriate proceedings instituted by the Attorney General for that purpose in the United States district court for the district in which the property or some part thereof is located, except that any such ownership or interest hereby forbidden which may be acquired by descent, will, judgment, or decree may be held for two years and not longer after its acquisition. [— *Stat. L.* —.]

SEC. 6. [Reservations in leases, etc.— easements — rights of way — disposal of surface of lands.] That any permit, lease, occupation, or use permitted under this Act shall reserve to the Secretary of the Interior the right to permit for joint or several use such easements or rights of way upon, through, or in the lands leased, occupied, or used as may be necessary or appropriate to the working of the same, or of other lands containing the deposits described in this Act, and the treatment and shipment of the products thereof by or under authority of the Government, its lessees, or permittees, and for other public purposes: *Provided*, That said Secretary, in his discretion, in making any lease under this Act may reserve to the United States the right to dispose of the surface of the lands embraced within such lease under existing law or laws hereafter enacted, in so far

as said surface is not necessary for use of the lessee in extracting and removing the deposits therein: *Provided further*, That if such reservation is made it shall be so determined before the offering of such lease; that the said Secretary, during the life of the lease, is authorized to issue such permits for easements herein provided to be reserved. [— *Stat. L.* —.]

SEC. 7. [Provisions in lease for protection of public.] That each lease shall contain provisions deemed necessary for the protection of the interests of the United States, and for the prevention of monopoly, and for the safeguarding of the public welfare. [— *Stat. L.* —.]

SEC. 8. [Forfeiture of lease — failure of lessee to comply with statute, etc.] That any lease issued under the provisions of this Act may be forfeited and canceled by an appropriate proceeding in the United States district court for the district in which the property or some part thereof is located whenever the lessee fails to comply with any of the provisions of this Act, of the lease, or of the general regulations promulgated under this Act and in force at the date of the lease, and the lease may provide for resort to appropriate methods for the settlement of disputes or for remedies for breach of specified conditions thereof. [— *Stat. L.* —.]

SEC. 9. [Application of Act to all deposits of potassium salts.] That the provisions of this Act shall also apply to all deposits of potassium salts in the lands of the United States which may have been or may be disposed of under laws reserving to the United States the potassium deposits with the right to prospect for, drill, mine, and remove the same, subject to such conditions as to the use and occupancy of the surface as are or may hereafter be provided by law. [— *Stat. L.* —.]

SEC. 10. [Royalties and rentals — disposition of moneys received.] That all moneys received from royalties and rentals under the provisions of this Act, excepting those from Alaska, shall be paid into, reserved, and appropriated as a part of the reclamation fund created by the Act of Congress approved June seventeenth, nineteen hundred and two, known as the reclamation Act, but after use thereof in the construction of reclamation works, and upon return to the reclamation fund of any such moneys in the manner provided by the reclamation Act and Acts amendatory thereof and supplemental thereto, fifty per centum of the amounts derived from such royalties and rentals, so utilized in and returned to the reclamation fund shall be paid by the Secretary of the Treasury after the expiration of each fiscal year to the State within the boundaries of which the leased lands or deposits are or were located, said moneys to be used by such State or subdivisions thereof for the construction and maintenance of public roads or for the support of public schools. [— *Stat. L.* —.]

For the Reclamation Act of June 17, 1902, ch. 1093, mentioned in the text, see 7 Fed. Stat. Ann. 1098; 9 Fed. Stat. Ann. (2d ed.) 1363.

SEC. 11. [Rules and regulations.] That the Secretary of the Interior is authorized to prescribe necessary and proper rules and regulations and to do any and all things necessary to carry out and accomplish the purposes of this Act. [*— Stat. L. —.*]

SEC. 12. [Deposits disposed of in form and manner herein provided — rights of state.] That the deposits herein referred to, in lands valuable for such minerals, shall be subject to disposition only in the form and manner provided in this Act, except as to valid claims existent at date of the passage of this Act and thereafter maintained in compliance with the laws under which initiated, which claims may be perfected under such laws: *Provided*, That nothing in this Act shall be construed or held to affect the rights of the States or other local authority to exercise any rights which they may have to levy and collect taxes upon improvements, output of mines, or other rights, property, or assets of any lessee. [*— Stat. L. —.*]

SEC. 13. [Price and disposal of mineral extracted — regulation by President.] That the Secretary of the Interior is hereby authorized and directed to incorporate in every lease issued under the provisions of this Act a provision reserving to the President the right to regulate the price of all mineral extracted and sold from the leased premises, which stipulation shall specifically provide that the price or prices fixed shall be such as to yield a fair and reasonable return to the lessee upon his investment and to secure to the consumer any of such products at the lowest price reasonable and consistent with the foregoing: *Provided*, That such lease issued under this Act shall also stipulate that the President shall have authority to so regulate the disposal of the potassium products produced under such lease as to secure its distribution and use wholly within the limits of the United States or its possessions.

[**Sec. 1.**] [**Supplies, etc., for Bureau of Mines.**] * * * The purchase of supplies and equipment or the procurement of services for the Bureau of Mines outside of the District of Columbia, hereafter may be made in open market in the manner common among business men when the aggregate amount of the purchase does not exceed \$50. [*— Stat. L. —.*]

This and the following paragraph are from the Sundry Civil Appropriation Act of July 1, 1918, ch. —.

[**Platinum, iridium and palladium and compounds thereof — statutes and regulations affecting.**] * * * That platinum, iridium, and palladium and compounds thereof are hereby made subject to the terms, conditions, and limitations of said Act of October sixth, nineteen hundred and seventeen, and the Director of the Bureau of Mines is hereby authorized, under rules and regulations approved by the Secretary of the Interior, to limit the sale, possession, and the use of said material. [*— Stat. L. —.*]

See the note to the preceding paragraph of the text.

MUNITION TAX

See INTERNAL REVENUE

NATIONAL BANKS

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CROSS-REFERENCE

Federal Farm Loan Act, see AGRICULTURE

I. OBTAINING AND ISSUING CIRCULATING NOTES

An Act To amend the laws relating to the denominations of circulating notes by national banks and to permit the issuance of notes of small denominations, and for other purposes.

[Act of Oct. 5, 1917, ch. —, — Stat. L. —.]

[SEC. 1.] [Circulating notes — denominations — less than five dollars — R. S. sec. 5175 repealed.] That the Act of June third, eighteen hundred and sixty-four, Revised Statutes, section fifty-one hundred and seventy-five, which prohibits national banks from being furnished with notes of less denomination than \$5, be, and it is hereby, repealed. *[— Stat. L. —.]*

For R. S. sec. 5175, repealed by this section, see 5 Fed. Stat. Ann. 119; 6 Fed. Stat. Ann. (2d ed.) 732.

SEC. 2. [Denominations — five dollars — former provisions repealed.] That that part of the Act of March fourteenth, nineteen hundred, which provides "that no national banking association shall, after the passage of this Act, be entitled to receive from the Comptroller of the Currency, or to issue or reissue, or place in circulation more than one-third in amount of its circulating notes of the denomination of \$5," be, and it is hereby, repealed. *[— Stat. L. —.]*

For the provisions of the Act of March 14, 1900, ch. 41, § 12, repealed by this section, see 5 Fed. Stat. Ann. 117; 6 Fed. Stat. Ann. (2d ed.) 739.

SEC. 3. [Denominations — amounts authorized.] That from and after the passage of this Act any national banking association, upon compliance with the provisions of law applicable thereto, shall be entitled to receive

the Federal reserve bank opening such account or appointing such agency or correspondent, any transaction authorized by this section under rules and regulations to be prescribed by the board." [— *Stat. L.* —.]

For the Act of Dec. 23, 1913, ch. 260, § 14, subsec. 8, amended by this section, see 1914 Supp. Fed. Stat. Ann. 274; 6 Fed. Stat. Ann. (2d ed.) 833.

SEC. 7. [Note issues — regulations — Federal reserve Act, sec. 16 amended.] That section sixteen, paragraphs two, three, four, five, six, and seven, be further amended and reenacted so as to read as follows:

"Any Federal reserve bank may make application to the local Federal reserve agent for such amount of the Federal reserve notes hereinbefore provided for as it may require. Such application shall be accompanied with a tender to the local Federal reserve agent of collateral in amount equal to the sum of the Federal reserve notes thus applied for and issued pursuant to such application. The collateral security thus offered shall be notes, drafts, bills of exchange, or acceptances acquired under the provisions of section thirteen of this Act, or bills of exchange indorsed by a member bank of any Federal reserve district and purchased under the provisions of section fourteen of this Act, or bankers' acceptances purchased under the provisions of said section fourteen, or gold or gold certificates; but in no event shall such collateral security, whether gold, gold certificates, or eligible paper, be less than the amount of Federal reserve notes applied for. The Federal reserve agent shall each day notify the Federal Reserve Board of all issues and withdrawals of Federal reserve notes to and by the Federal reserve bank to which he is accredited. The said Federal Reserve Board may at any time call upon a Federal reserve bank for additional security to protect the Federal reserve notes issued to it.

"Every Federal reserve bank shall maintain reserves in gold or lawful money of not less than thirty-five per centum against its deposits and reserves in gold of not less than forty per centum against its Federal reserve notes in actual circulation: *Provided, however,* That when the Federal reserve agent holds gold or gold certificates as collateral for Federal reserve notes issued to the bank such gold or gold certificates shall be counted as part of the gold reserve which such bank is required to maintain against its Federal reserve notes in actual circulation. Notes so paid out shall bear upon their faces a distinctive letter and serial number which shall be assigned by the Federal Reserve Board to each Federal reserve bank. Whenever Federal reserve notes issued through one Federal reserve bank shall be received by another Federal reserve bank, they shall be promptly returned for credit or redemption to the Federal reserve bank through which they were originally issued or, upon direction of such Federal reserve bank, they shall be forwarded direct to the Treasurer of the United States to be retired. No Federal reserve bank shall pay out notes issued through another under penalty of a tax of ten per centum upon the face value of notes so paid out. Notes presented for redemption at the Treasury of the United States shall be paid out of the redemption fund and returned to the Federal reserve banks through which they were originally issued, and thereupon such Federal reserve bank shall, upon demand of the Secretary of the Treasury, reimburse such redemption fund in lawful money or, if such Federal reserve notes have been redeemed by the

Treasurer in gold or gold certificates, then such funds shall be reimbursed to the extent deemed necessary by the Secretary of the Treasury in gold or gold certificates, and such Federal reserve bank shall, so long as any of its Federal reserve notes remain outstanding, maintain with the Treasurer in gold an amount sufficient in the judgment of the Secretary to provide for all redemptions to be made by the Treasurer. Federal reserve notes by the Treasurer otherwise than for redemption may be exchanged for gold out of the redemption fund hereinafter provided and returned to the reserve bank through which they were originally issued, or they may be returned to such bank for the credit of the United States. Federal reserve notes unfit for circulation shall be returned by the Federal reserve agents to the Comptroller of the Currency for cancellation and destruction.

"The Federal Reserve Board shall require each Federal reserve bank to maintain on deposit in the Treasury of the United States a sum in gold sufficient in the judgment of the Secretary of the Treasury for the redemption of the Federal reserve notes issued to such bank, but in no event less than five per centum of the total amount of notes issued less the amount of gold or gold certificates held by the Federal reserve agent as collateral security; but such deposit of gold shall be counted and included as part of the forty per centum reserve hereinbefore required. The board shall have the right, acting through the Federal reserve agent, to grant, in whole or in part, or to reject entirely the application of any Federal reserve bank for Federal reserve notes; but to the extent that such application may be granted the Federal Reserve Board shall, through its local Federal reserve agent, supply Federal reserve notes to the banks so applying, and such bank shall be charged with the amount of notes issued to it and shall pay such rate of interest as may be established by the Federal Reserve Board on only that amount of such notes which equals the total amount of its outstanding Federal reserve notes less the amount of gold or gold certificates held by the Federal reserve agent as collateral security. Federal reserve notes issued to any such bank shall, upon delivery, together with such notes of such Federal reserve bank as may be issued under section eighteen of this Act upon security of United States two per centum Government bonds, become a first and paramount lien on all the assets of such bank.

"Any Federal reserve bank may at any time reduce its liability for outstanding Federal reserve notes by depositing with the Federal reserve agent its Federal reserve notes, gold, gold certificates, or lawful money of the United States. Federal reserve notes so deposited shall not be reissued, except upon compliance with the conditions of an original issue.

"The Federal reserve agent shall hold such gold, gold certificates, or lawful money available exclusively for exchange for the outstanding Federal reserve notes when offered by the reserve bank of which he is a director. Upon the request of the Secretary of the Treasury the Federal Reserve Board shall require the Federal reserve agent to transmit to the Treasurer of the United States so much of the gold held by him as collateral security for Federal reserve notes as may be required for the exclusive purpose of the redemption of such Federal reserve notes, but such gold when deposited with the Treasurer shall be counted and considered as if collateral security on deposit with the Federal reserve agent.

"Any Federal reserve bank may at its discretion withdraw collateral

III. FEDERAL RESERVE BANKS

An Act To amend certain sections of the Act entitled "Federal reserve Act" approved December twenty-third, nineteen hundred and thirteen.

[Act of Sept. 7, 1916, ch. 461, 39 Stat. L. 752.]

[Member banks — reserves — where kept — Federal reserve Act, sec. 11, amended.] That the Act entitled "Federal reserve Act," approved December twenty-third, nineteen hundred and thirteen, be, and is hereby, amended as follows:

At the end of section eleven insert a new clause as follows:

"(m) Upon the affirmative vote of not less than five of its members the Federal Reserve Board shall have power, from time to time, by general ruling, covering all districts alike, to permit member banks to carry in the Federal reserve banks of their respective districts any portion of their reserves now required by section nineteen of this Act to be held in their own vaults."

For the Federal Reserve Act of Dec. 23, 1913, ch. 260, § 11, amended by this paragraph, see 1914 Supp. Fed. Stat. Ann. 271; 6 Fed. Stat. Ann. (2d ed.) 828.

[Powers of Federal reserve banks — deposits — discounts — Federal Reserve Act, sec. 13, amended.] That section thirteen be, and is hereby, amended to read as follows:

"Any Federal reserve bank may receive from any of its member banks, and from the United States, deposits of current funds in lawful money, national bank notes, Federal reserve notes, or checks, and drafts, payable upon presentation, and also, for collection, maturing bills; or solely for purposes of exchange or of collection, may receive from other Federal reserve banks deposits of current funds in lawful money, national bank notes, or checks upon other Federal reserve banks, and checks and drafts, payable upon presentation within its district, and maturing bills payable within its district.

"Upon the indorsement of any of its member banks, which shall be deemed a waiver of demand, notice and protest by such bank as to its own indorsement exclusively, any Federal reserve bank may discount notes, drafts, and bills of exchange arising out of actual commercial transactions; that is, notes, drafts, and bills of exchange issued or drawn for agricultural, industrial, or commercial purposes, or the proceeds of which have been used, or are to be used, for such purposes, the Federal Reserve Board to have the right to determine or define the character of the paper thus eligible for discount, within the meaning of this Act. Nothing in this Act contained shall be construed to prohibit such notes, drafts, and bills of exchange, secured by staple agricultural products, or other goods, wares, or merchandise from being eligible for such discount; but such definition shall not include notes, drafts, or bills covering merely investments or issued or drawn for the purpose of carrying or trading in stocks, bonds, or other investment securities, except bonds and notes of the Government of the United States. Notes, drafts, and bills admitted to discount under the terms of this paragraph must have a maturity at the time of discount of not more than ninety days,

exclusive of days of grace: *Provided*, That notes, drafts, and bills drawn or issued for agricultural purposes or based on live stock and having a maturity not exceeding six months, exclusive of days of grace, may be discounted in an amount to be limited to a percentage of the assets of the Federal reserve bank, to be ascertained and fixed by the Federal Reserve Board.

"The aggregate of such notes, drafts, and bills bearing the signature or indorsement of any one borrower, whether a person, company, firm, or corporation, rediscounted for any one bank shall at no time exceed ten per centum of the unimpaired capital and surplus of said bank; but this restriction shall not apply to the discount of bills of exchange drawn in good faith against actually existing values.

Any Federal reserve bank may discount acceptances of the kinds hereinafter described, which have a maturity at the time of discount of not more than three months' sight, exclusive of days of grace, and which are indorsed by at least one member bank.

"Any member bank may accept drafts or bills of exchange drawn upon it having not more than six months' sight to run, exclusive of days of grace, which grow out of transactions involving the importation or exportation of goods; or which grow out of transactions involving the domestic shipment of goods provided shipping documents conveying or securing title are attached at the time of acceptance; or which are secured at the time of acceptance by a warehouse receipt or other such document conveying or securing title covering readily marketable staples. No member bank shall accept, whether in a foreign or domestic transaction, for any one person, company, firm, or corporation to an amount equal at any time in the aggregate to more than ten per cent of its paid-up and unimpaired capital stock and surplus unless the bank is secured either by attached documents or by some other actual security growing out of the same transaction as the acceptance and no bank shall accept such bills to an amount equal at any time in the aggregate to more than one-half of its paid-up and unimpaired capital stock and surplus.

"Any Federal reserve bank may make advances to its member banks on their promissory notes for a period not exceeding fifteen days at rates to be established by such Federal reserve banks, subject to the review and determination of the Federal Reserve Board, provided such promissory notes are secured by such notes, drafts, bills of exchange, or bankers' acceptances as are eligible for rediscount or for purchase by Federal reserve banks under the provisions of this Act, or by the deposit or pledge of bonds or notes of the United States." * * *

For the Act of Dec. 23, 1913, ch. 260, § 13, amended by this paragraph, see 1914 Supp. Fed. Stat. Ann. 273; 6 Fed. Stat. Ann. (2d ed.) 831.

This section was subsequently amended by the Act of June 21, 1917, ch. —, §§ 4, 5, *infra*, p. 478.

A portion of this paragraph, omitted here, amended R. S. sec. 5202, and is given *supra*, p. 468 note.

[Establishment of accounts—agencies—purchase, etc., of bills of exchange—Federal reserve Act, sec. 14, subsec. (e) amended.] That subsection (e) of section fourteen, be, and is hereby, amended to read as follows:

“(e) To establish accounts with other Federal reserve banks for exchange purposes and, with the consent of the Federal Reserve Board, to open and maintain accounts in foreign countries, appoint correspondents, and establish agencies in such countries wheresoever it may deem best for the purpose of purchasing, selling, and collecting bills of exchange, and to buy and sell, with or without its indorsement, through such correspondents or agencies bills of exchange arising out of actual commercial transactions which have not more than ninety days to run, exclusive of days of grace, and which bear the signature of two or more responsible parties, and, with the consent of the Federal Reserve Board, to open and maintain banking accounts for such foreign correspondents or agencies.”

For the Act of Dec. 23, 1913, ch. 260, § 14, subsection (e), amended by the paragraph, see 1914 Supp. Fed. Stat. Ann. 274; 6 Fed. Stat. Ann. (2d ed.) 833.

Said subdivision (e) amended by this paragraph was subsequently amended by the Act of June 21, 1917, ch. —, § 6, *infra*, p. 479.

[Note issues — regulations — Federal reserve Act, sec. 16 amended.]

That the second paragraph of section sixteen be, and is hereby, amended to read as follows:

“Any Federal reserve bank may make application to the local Federal reserve agent for such amount of the Federal reserve notes hereinbefore provided for as it may require. Such application shall be accompanied with a tender to the local Federal reserve agent of collateral in amount equal to the sum of the Federal reserve notes thus applied for and issued pursuant to such application. The collateral security thus offered shall be notes, drafts, bills of exchange, or acceptances rediscounted under the provisions of section thirteen of this Act, or bills of exchange indorsed by a member bank of any Federal reserve district and purchased under the provisions of section fourteen of this Act, or bankers' acceptances purchased under the provisions of said section fourteen. The Federal reserve agent shall each day notify the Federal Reserve Board of all issues and withdrawals of Federal reserve notes to and by the Federal reserve bank to which he is accredited. The said Federal Reserve Board may at any time call upon a Federal reserve bank for additional security to protect the Federal reserve notes issued to it.”

For the Act of Dec. 23, 1913, ch. 260, § 13, amended by this paragraph, see 1914 Supp. Fed. Stat. Ann. 275; 6 Fed. Stat. Ann. (2d ed.) 833.

The second paragraph of said section 16 amended by the text was again amended by the Act of June 21, 1917, ch. —, § 7, *infra*, p. 480.

[Loans on farm lands — Federal reserve Act, sec. 24 amended.] That section twenty-four be, and is hereby, amended to read as follows:

“SEC. 24. Any national banking association not situated in a central reserve city may make loans secured by improved and unencumbered farm land situated within its Federal reserve district or within a radius of one hundred miles of the place in which such bank is located, irrespective of district lines, and may also make loans secured by improved and unencumbered real estate located within one hundred miles of the place in which such bank is located, irrespective of district lines; but no loan made upon the security of such farm land shall be made for a longer time than five

years, and no loan made upon the security of such real estate as distinguished from farm land shall be made for a longer time than one year nor shall the amount of any such loan, whether upon such farm land or upon such real estate, exceed fifty per centum of the actual value of the property offered as security. Any such bank may make such loans, whether secured by such farm land or such real estate, in an aggregate sum equal to twenty-five per centum of its capital and surplus or to one-third of its time deposits and such banks may continue hereafter as heretofore to receive time deposits and to pay interest on the same.

"The Federal Reserve Board shall have power from time to time to add to the list of cities in which national banks shall not be permitted to make loans secured upon real estate in the manner described in this section."

For the Act of Dec. 23, 1913, ch. 260, § 24, amended by the text, see 1914 Supp. Fed. Stat. Ann. 283; 6 Fed. Stat. Ann. (2d ed.) 841.

[Foreign branches — Federal reserve Act, sec. 25 amended.] That section twenty-five be, and is hereby, amended to read as follows:

"SEC. 25. Any national banking association possessing a capital and surplus of \$1,000,000 or more may file application with the Federal Reserve Board for permission to exercise, upon such conditions and under such regulations as may be prescribed by the said board, either or both of the following powers:

"First. To establish branches in foreign countries or dependencies or insular possessions of the United States for the furtherance of the foreign commerce of the United States, and to act if required to do so as fiscal agents of the United States.

"Second. To invest an amount not exceeding in the aggregate ten per centum of its paid-in capital stock and surplus in the stock of one or more banks or corporations chartered or incorporated under the laws of the United States or of any state thereof, and principally engaged in international or foreign banking, or banking in a dependency or insular possession of the United States either directly or through the agency, ownership, or control of local institutions in foreign countries, or in such dependencies or insular possessions.

"Such application shall specify the name and capital of the banking association filing it, the powers applied for, and the place or places where the banking operations proposed are to be carried on. The Federal Reserve Board shall have power to approve or to reject such application in whole or in part if for any reason the granting of such application is deemed inexpedient, and shall also have power from time to time to increase or decrease the number of places where such banking operations may be carried on.

"Every national banking association operating foreign branches shall be required to furnish information concerning the condition of such branches to the Comptroller of the Currency upon demand, and every member bank investing in the capital stock of banks or corporations described under subparagraph two of the first paragraph of this section shall be required to furnish information concerning the condition of such banks or corporations to the Federal Reserve Board upon demand, and the Federal Reserve Board may order special examinations of the said branches, banks, or corporations at such time or times as it may deem best.

"SEC. 19. Demand deposits within the meaning of this Act shall comprise all deposits payable within thirty days, and time deposits shall comprise all deposits payable after thirty days, all savings accounts and certificates of deposit which are subject to not less than thirty days' notice before payment, and all postal savings deposits.

"Every bank, banking association, or trust company which is or which becomes a member of any Federal reserve bank shall establish and maintain reserve balances with its Federal reserve bank as follows:

"(a) If not in a reserve or central reserve city, as now or hereafter defined, it shall hold and maintain with the Federal reserve bank of its district an actual net balance equal to not less than seven per centum of the aggregate amount of its demand deposits and three per centum of its time deposits.

"(b) If in a reserve city, as now or hereafter defined, it shall hold and maintain with the Federal reserve bank of its district an actual net balance equal to not less than ten per centum of the aggregate amount of its demand deposits and three per centum of its time deposits.

"(c) If in a central reserve city, as now or hereafter defined, it shall hold and maintain with the Federal reserve bank of its district an actual net balance equal to not less than thirteen per centum of the aggregate amounts of its demand deposits and three per centum of its time deposits.

"No member bank shall keep on deposit with any State bank or trust company which is not a member bank a sum in excess of ten per centum of its own paid-up capital and surplus. No member bank shall act as the medium or agent of a nonmember bank in applying for or receiving discounts from a Federal reserve bank under the provisions of this Act, except by permission of the Federal Reserve Board.

"The required balance carried by a member bank with a Federal reserve bank may, under the regulations and subject to such penalties as may be prescribed by the Federal Reserve Board, be checked against and withdrawn by such member bank for the purpose of meeting existing liabilities: *Provided, however,* That no bank shall at any time make new loans or shall pay any dividends unless and until the total balance required by law is fully restored.

"In estimating the balances required by this Act, the net difference of amounts due to and from other banks shall be taken as the basis for ascertaining the deposits against which required balances with Federal reserve banks shall be determined.

"National banks, or banks organized under local laws, located in Alaska or in a dependency or insular possession or any part of the United States outside the continental United States may remain nonmember banks, and shall in that event maintain reserves and comply with all the conditions now provided by law regulating them; or said banks may, with the consent of the Reserve Board, become member banks of any one of the reserve districts, and shall in that event take stock, maintain reserves, and be subject to all the other provisions of this Act." [— *Stat. L.* —.]

For the Act of Dec. 23, 1913, ch. 260, § 19, amended by this section, see 1914 Supp. Fed. Stat. Ann. 279; 6 Fed. Stat. Ann. (2d ed.) 838.

This section was affected, as to the disposition of reserves, by the first paragraph of the Act of Sept. 7, 1916, ch. 461, *supra*, p. 470.

SEC. 11. [Fee or gift to officer or employee — Federal reserve Act, sec. 22 amended.] That that part of section twenty-two which reads as follows: "Other than the usual salary or director's fees paid to any officer, director, or employee of a member bank and other than a reasonable fee paid by said bank to such officer, director, or employee for service rendered to such bank, no officer, director, employee, or attorney of a member bank shall be a beneficiary of or receive, directly or indirectly, any fee, commission, gift, or other consideration for or in connection with any transaction or business of the bank," be amended and reenacted so as to read as follows:

"Other than the usual salary or director's fee paid to any officer, director, employee, or attorney of a member bank, and other than a reasonable fee paid by said bank to such officer, director, employee, or attorney for services rendered to such bank, no officer, director, employee, or attorney of a member bank shall be a beneficiary of or receive, directly or indirectly, any fee, commission, gift, or other consideration for or in connection with any transaction or business of the bank: *Provided, however,* That nothing in this Act contained shall be construed to prohibit a director, officer, employee, or attorney from receiving the same rate of interest paid to other depositors for similar deposits made with such bank: *And provided further,* That notes, drafts, bills of exchange, or other evidences of debt executed or indorsed by directors or attorneys of a member bank may be discounted with such member bank on the same terms and conditions as other notes, drafts, bills of exchange, or evidences of debt upon the affirmative vote or written assent of at least a majority of the members of the board of directors of such member bank." [— *Stat. L. —*.]

For the Act of Dec. 23, 1913, ch. 260, § 22, amended by this Act, see 1914 Supp. Fed. Stat. Ann. 283; 6 Fed. Stat. Ann. (2d ed.) 926.

IV. DISSOLUTION AND RECEIVERSHIP

An Act To amend section fifty-two hundred and thirty-four of the Revised Statutes of the United States so as to permit the Comptroller of the Currency to deposit upon interest the assets of insolvent national banks in other national banks of the same or of an adjacent city or town.

[*Act of May 15, 1916, ch. 121, 39 Stat. L. 121.*]

[Insolvent national banks — deposit of assets — interest — R. S. sec. 5234 amended.] That section fifty-two hundred and thirty-four of the Revised Statutes of the United States be amended by adding at the end thereof the following:

"*Provided,* That the comptroller may, if he deems proper, deposit any of the money so made in any regular Government depository, or in any State or national bank either of the city or town in which the insolvent bank was located, or of a city or town as adjacent thereto as practicable; if such deposit is made he shall require the depository to deposit United States bonds or other satisfactory securities with the Treasurer of the

amended.] That section nine be amended and reenacted so as to read as follows:

" SEC. 9. Any bank incorporated by special law of any State, or organized under the general laws of any State or of the United States, desiring to become a member of the Federal Reserve System, may make application to the Federal Reserve Board, under such rules and regulations as it may prescribe, for the right to subscribe to the stock of the Federal reserve bank organized within the district in which the applying bank is located. Such application shall be for the same amount of stock that the applying bank would be required to subscribe to as a national bank. The Federal Reserve Board, subject to such conditions as it may prescribe, may permit the applying bank to become a stockholder of such Federal reserve bank.

" In acting upon such applications the Federal Reserve Board shall consider the financial condition of the applying bank, the general character of its management, and whether or not the corporate powers exercised are consistent with the purposes of this Act.

" Whenever the Federal Reserve Board shall permit the applying bank to become a stockholder in the Federal reserve bank of the district its stock subscription shall be payable on call of the Federal Reserve Board, and stock issued to it shall be held subject to the provisions of this Act.

" All banks admitted to membership under authority of this section shall be required to comply with the reserve and capital requirements of this Act and to conform to those provisions of law imposed on national banks which prohibit such banks from lending on or purchasing their own stock, which relate to the withdrawal or impairment of their capital stock, and which relate to the payment of unearned dividends. Such banks and the officers, agents, and employees thereof shall also be subject to the provisions of and to the penalties prescribed by section fifty-two hundred and nine of the Revised Statutes, and shall be required to make reports of condition and of the payment of dividends to the Federal reserve bank of which they become a member. Not less than three of such reports shall be made annually on call of the Federal reserve bank on dates to be fixed by the Federal Reserve Board. Failure to make such reports within ten days after the date they are called for shall subject the offending bank to a penalty of \$100 a day for each day that it fails to transmit such report; such penalty to be collected by the Federal reserve bank by suit or otherwise.

" As a condition of membership such banks shall likewise be subject to examinations made by direction of the Federal Reserve Board or of the Federal reserve bank by examiners selected or approved by the Federal Reserve Board.

" Whenever the directors of the Federal reserve bank shall approve the examinations made by the State authorities, such examinations and the reports thereof may be accepted in lieu of examinations made by examiners selected or approved by the Federal Reserve Board: *Provided, however,* That when it deems it necessary the board may order special examinations, by examiners of its own selection and shall in all cases approve the form of the report. The expenses of all examinations, other than those made by State authorities, shall be assessed against and paid by the banks examined.

" If at any time it shall appear to the Federal Reserve Board that a

member bank has failed to comply with the provisions of this section or the regulations of the Federal Reserve Board made pursuant thereto, it shall be within the power of the board after hearing to require such bank to surrender its stock in the Federal reserve bank and to forfeit all rights and privileges of membership. The Federal Reserve Board may restore membership upon due proof of compliance with the conditions imposed by this section.

“Any State bank or trust company desiring to withdraw from membership in a Federal reserve bank may do so, after six months’ written notice shall have been filed with the Federal Reserve Board, upon the surrender and cancellation of all of its holdings of capital stock in the Federal reserve bank: *Provided, however,* That no Federal reserve bank shall, except under express authority of the Federal Reserve Board, cancel within the same calendar year more than twenty-five per centum of its capital stock for the purpose of effecting voluntary withdrawals during that year. All such applications shall be dealt with in the order in which they are filed with the board. Whenever a member bank shall surrender its stock holdings in a Federal reserve bank, or shall be ordered to do so by the Federal Reserve Board, under authority of law, all of its rights and privileges as a member bank shall thereupon cease and determine, and after due provision has been made for any indebtedness due or to become due to the Federal reserve bank it shall be entitled to a refund of its cash paid subscription with interest at the rate of one-half of one per centum per month from date of last dividend, if earned, the amount refunded in no event to exceed the book value of the stock at that time, and shall likewise be entitled to repayment of deposits and of any other balance due from the Federal reserve bank.

“No applying bank shall be admitted to membership in a Federal reserve bank unless it possesses a paid-up unimpaired capital sufficient to entitle it to become a national banking association in the place where it is situated under the provisions of the national-bank Act.

“Banks becoming members of the Federal Reserve System under authority of this section shall be subject to the provisions of this section and to those of this Act which relate specifically to member banks, but shall not be subject to examination under the provisions of the first two paragraphs of section fifty-two hundred and forty of the Revised Statutes as amended by section twenty-one of this Act. Subject to the provisions of this Act and to the regulations of the board made pursuant thereto, any bank becoming a member of the Federal Reserve System shall retain its full charter and statutory rights as a State bank or trust company, and may continue to exercise all corporate powers granted it by the State in which it was created, and shall be entitled to all privileges of member banks: *Provided, however,* That no Federal reserve bank shall be permitted to discount for any State bank or trust company notes, drafts, or bills of exchange of any one borrower who is liable for borrowed money to such State bank or trust company in an amount greater than ten per centum of the capital and surplus of such State bank or trust company, but the discount of bills of exchange drawn against actually existing value and the discount of commercial or business paper actually owned by the person negotiating the same shall not be considered as borrowed money within

the meaning of this section. The Federal reserve bank, as a condition of the discount of notes, drafts, and bills of exchange for such State bank or trust company, shall require a certificate or guaranty to the effect that the borrower is not liable to such bank in excess of the amount provided by this section, and will not be permitted to become liable in excess of this amount while such notes, drafts, or bills of exchange are under discount with the Federal reserve bank.

“It shall be unlawful for any officer, clerk, or agent of any bank admitted to membership under authority of this section to certify any check drawn upon such bank unless the person or company drawing the check has on deposit therewith at the time such check is certified an amount of money equal to the amount specified in such check. Any check so certified by duly authorized officers shall be a good and valid obligation against such bank, but the act of any such officer, clerk, or agent in violation of this section may subject such bank to a forfeiture of its membership in the Federal Reserve System upon hearing by the Federal Reserve Board.”
[— *Stat. L.* —.]

For the Act of Dec. 23, 1913, ch. 260, § 9, amended by this section, see 1914 Supp. Fed. Stat. Ann. 268; 6 Fed. Stat. Ann. (2d ed.) 825.

SEC. 4. [Powers of Federal reserve banks—Federal reserve Act, sec. 13 amended.] That the first paragraph of section thirteen be further amended and reenacted so as to read as follows:

“Any Federal reserve bank may receive from any of its member banks, and from the United States, deposits of current funds in lawful money, national-bank notes, Federal reserve notes, or checks, and drafts, payable upon presentation, and also, for collection, maturing notes and bills; or, solely for purposes of exchange or of collection, may receive from other Federal reserve banks deposits of current funds in lawful money, national-bank notes, or checks upon other Federal reserve banks, and checks and drafts, payable upon presentation within its district, and maturing notes and bills payable within its district; or, solely for the purposes of exchange or of collection, may receive from any nonmember bank or trust company deposits of current funds in lawful money, national-bank notes, Federal reserve notes, checks and drafts payable upon presentation, or maturing notes and bills: *Provided*, Such nonmember bank or trust company maintains with the Federal reserve bank of its district a balance sufficient to offset the items in transit held for its account by the Federal reserve bank: *Provided further*, That nothing in this or any other section of this Act shall be construed as prohibiting a member or nonmember bank from making reasonable charges, to be determined and regulated by the Federal Reserve Board, but in no case to exceed 10 cents per \$100 or fraction thereof, based on the total of checks and drafts presented at any one time, for collection, or payment of checks and drafts and remission therefor by exchange or otherwise; but no such charges shall be made against the Federal reserve banks.” [— *Stat. L.* —.]

For the Act of Dec. 23, 1913, ch. 260, § 13, amended by this section, see 1914 Supp. Fed. Stat. Ann. 373; 6 Fed. Stat. Ann. (2d ed.) 831.

The paragraph amended by this section was previously amended by the Act of Sept. 7, 1916, ch. 461, *supra*, p. 470.

SEC. 5. [Powers of Federal reserve banks — Federal reserve Act, sec. 13 amended.] That the fifth paragraph of section thirteen be further amended and reenacted so as to read as follows:

"Any member bank may accept drafts or bills of exchange drawn upon it having not more than six months sight to run, exclusive of days of grace, which grow out of transactions involving the importation or exportation of goods; or which grow out of transactions involving the domestic shipment of goods provided shipping documents conveying or securing title are attached at the time of acceptance; or which are secured at the time of acceptance by a warehouse receipt or other such document conveying or securing title covering readily marketable staples. No member bank shall accept, whether in a foreign or domestic transaction, for any one person, company, firm, or corporation to an amount equal at any time in the aggregate to more than ten per centum of its paid-up and unimpaired capital stock and surplus, unless the bank is secured by attached documents or by some other actual security growing out of the same transaction as the acceptance; and no bank shall accept such bills to an amount equal at any time in the aggregate to more than one-half of its paid-up and unimpaired capital stock and surplus: *Provided, however,* That the Federal Reserve Board, under such general regulations as it may prescribe, which shall apply to all banks alike regardless of the amount of capital stock and surplus, may authorize any member bank to accept such bills to an amount not exceeding at any time in the aggregate one hundred per centum of its paid-up and unimpaired capital stock and surplus: *Provided, further,* That the aggregate of acceptances growing out of domestic transactions shall in no event exceed fifty per centum of such capital stock and surplus." [— *Stat. L.* —.]

For the Act of Dec. 23, 1913, ch. 260, § 13, amended by this section, see 1914 Supp. Fed. Stat. Ann. 373; 6 Fed. Stat. Ann. (2d ed.) 831.

SEC. 6. [Open-market operations — Federal reserve Act, sec. 14, subsec. (e) amended.] That section fourteen, subsection (e), be amended and reenacted so as to read as follows:

"(e) To establish accounts with other Federal reserve banks for exchange purposes and, with the consent or upon the order and direction of the Federal Reserve Board and under regulations to be prescribed by said Board, to open and maintain accounts in foreign countries, appoint correspondents, and establish agencies in such countries wheresoever it may be deemed best for the purposes of purchasing, selling, and collecting bills of exchange, and to buy and sell, with or without its endorsement, through such correspondents or agencies, bills of exchange (or acceptances) arising out of actual commercial transactions which have not more than ninety days to run, exclusive of days of grace, and which bear the signature of two or more responsible parties, and, with the consent of the Federal Reserve Board, to open and maintain banking accounts for such foreign correspondents or agencies. Whenever any such account has been opened or agency or correspondent has been appointed by a Federal reserve bank, with the consent of or under the order and direction of the Federal Reserve Board, any other Federal reserve bank may, with the consent and approval of the Federal Reserve Board, be permitted to carry on or conduct, through

the Federal reserve bank opening such account or appointing such agency or correspondent, any transaction authorized by this section under rules and regulations to be prescribed by the board." [— *Stat. L.* —.]

For the Act of Dec. 23, 1913, ch. 260, § 14, subsec. 8, amended by this section, see 1914 Supp. Fed. Stat. Ann. 274; 6 Fed. Stat. Ann. (2d ed.) 833.

SEC. 7. [Note issues — regulations — Federal reserve Act, sec. 16 amended.] That section sixteen, paragraphs two, three, four, five, six, and seven, be further amended and reenacted so as to read as follows:

"Any Federal reserve bank may make application to the local Federal reserve agent for such amount of the Federal reserve notes hereinbefore provided for as it may require. Such application shall be accompanied with a tender to the local Federal reserve agent of collateral in amount equal to the sum of the Federal reserve notes thus applied for and issued pursuant to such application. The collateral security thus offered shall be notes, drafts, bills of exchange, or acceptances acquired under the provisions of section thirteen of this Act, or bills of exchange indorsed by a member bank of any Federal reserve district and purchased under the provisions of section fourteen of this Act, or bankers' acceptances purchased under the provisions of said section fourteen, or gold or gold certificates; but in no event shall such collateral security, whether gold, gold certificates, or eligible paper, be less than the amount of Federal reserve notes applied for. The Federal reserve agent shall each day notify the Federal Reserve Board of all issues and withdrawals of Federal reserve notes to and by the Federal reserve bank to which he is accredited. The said Federal Reserve Board may at any time call upon a Federal reserve bank for additional security to protect the Federal reserve notes issued to it.

"Every Federal reserve bank shall maintain reserves in gold or lawful money of not less than thirty-five per centum against its deposits and reserves in gold of not less than forty per centum against its Federal reserve notes in actual circulation: *Provided, however,* That when the Federal reserve agent holds gold or gold certificates as collateral for Federal reserve notes issued to the bank such gold or gold certificates shall be counted as part of the gold reserve which such bank is required to maintain against its Federal reserve notes in actual circulation. Notes so paid out shall bear upon their faces a distinctive letter and serial number which shall be assigned by the Federal Reserve Board to each Federal reserve bank. Whenever Federal reserve notes issued through one Federal reserve bank shall be received by another Federal reserve bank, they shall be promptly returned for credit or redemption to the Federal reserve bank through which they were originally issued or, upon direction of such Federal reserve bank, they shall be forwarded direct to the Treasurer of the United States to be retired. No Federal reserve bank shall pay out notes issued through another under penalty of a tax of ten per centum upon the face value of notes so paid out. Notes presented for redemption at the Treasury of the United States shall be paid out of the redemption fund and returned to the Federal reserve banks through which they were originally issued, and thereupon such Federal reserve bank shall, upon demand of the Secretary of the Treasury, reimburse such redemption fund in lawful money or, if such Federal reserve notes have been redeemed by the

Treasurer in gold or gold certificates, then such funds shall be reimbursed to the extent deemed necessary by the Secretary of the Treasury in gold or gold certificates, and such Federal reserve bank shall, so long as any of its Federal reserve notes remain outstanding, maintain with the Treasurer in gold an amount sufficient in the judgment of the Secretary to provide for all redemptions to be made by the Treasurer. Federal reserve notes by the Treasurer otherwise than for redemption may be exchanged for gold out of the redemption fund hereinafter provided and returned to the reserve bank through which they were originally issued, or they may be returned to such bank for the credit of the United States. Federal reserve notes unfit for circulation shall be returned by the Federal reserve agents to the Comptroller of the Currency for cancellation and destruction.

"The Federal Reserve Board shall require each Federal reserve bank to maintain on deposit in the Treasury of the United States a sum in gold sufficient in the judgment of the Secretary of the Treasury for the redemption of the Federal reserve notes issued to such bank, but in no event less than five per centum of the total amount of notes issued less the amount of gold or gold certificates held by the Federal reserve agent as collateral security; but such deposit of gold shall be counted and included as part of the forty per centum reserve hereinbefore required. The board shall have the right, acting through the Federal reserve agent, to grant, in whole or in part, or to reject entirely the application of any Federal reserve bank for Federal reserve notes; but to the extent that such application may be granted the Federal Reserve Board shall, through its local Federal reserve agent, supply Federal reserve notes to the banks so applying, and such bank shall be charged with the amount of notes issued to it and shall pay such rate of interest as may be established by the Federal Reserve Board on only that amount of such notes which equals the total amount of its outstanding Federal reserve notes less the amount of gold or gold certificates held by the Federal reserve agent as collateral security. Federal reserve notes issued to any such bank shall, upon delivery, together with such notes of such Federal reserve bank as may be issued under section eighteen of this Act upon security of United States two per centum Government bonds, become a first and paramount lien on all the assets of such bank.

"Any Federal reserve bank may at any time reduce its liability for outstanding Federal reserve notes by depositing with the Federal reserve agent its Federal reserve notes, gold, gold certificates, or lawful money of the United States. Federal reserve notes so deposited shall not be reissued, except upon compliance with the conditions of an original issue.

"The Federal reserve agent shall hold such gold, gold certificates, or lawful money available exclusively for exchange for the outstanding Federal reserve notes when offered by the reserve bank of which he is a director. Upon the request of the Secretary of the Treasury the Federal Reserve Board shall require the Federal reserve agent to transmit to the Treasurer of the United States so much of the gold held by him as collateral security for Federal reserve notes as may be required for the exclusive purpose of the redemption of such Federal reserve notes, but such gold when deposited with the Treasurer shall be counted and considered as if collateral security on deposit with the Federal reserve agent.

"Any Federal reserve bank may at its discretion withdraw collateral

deposited with the local Federal reserve agent for the protection of its Federal reserve notes issued to it and shall at the same time substitute therefor other collateral of equal amount with the approval of the Federal reserve agent under regulations to be prescribed by the Federal Reserve Board. Any Federal reserve bank may retire any of its Federal reserve notes by depositing them with the Federal reserve agent or with the Treasurer of the United States, and such Federal reserve bank shall thereupon be entitled to receive back the collateral deposited with the Federal reserve agent for the security of such notes. Federal reserve banks shall not be required to maintain the reserve or the redemption fund heretofore provided for against Federal reserve notes which have been retired. Federal reserve notes so deposited shall not be reissued except upon compliance with the conditions of an original issue."

All Federal reserve notes and all gold, gold certificates, and lawful money issued to or deposited with any Federal reserve agent under the provisions of the Federal reserve Act shall hereafter be held for such agent, under such rules and regulations as the Federal Reserve Board may prescribe, in the joint custody of himself and the Federal reserve bank to which he is accredited. Such agent and such Federal reserve bank shall be jointly liable for the safe-keeping of such Federal reserve notes, gold, gold certificates, and lawful money. Nothing herein contained, however, shall be construed to prohibit a Federal reserve agent from depositing gold or gold certificates with the Federal Reserve Board, to be held by such board subject to his order, or with the Treasurer of the United States for the purposes authorized by law. [— *Stat. L.* —.]

For the Act of Dec. 23, 1913, ch. 260, § 16, amended by this section, see 1914 Supp. Fed. Stat. Ann. 275; 6 Fed. Stat. Ann. (2d ed.) 833.

The second paragraph of said section 16, amended by the text, had been previously amended by the Act of Sept. 7, 1916, ch. 461, *supra*, p. 472.

The last paragraph of this section would not seem to be a part of the amending provisions, but, for convenience, is retained here.

SEC. 8. [Gold deposits — Federal reserve Act, sec. 16 amended.] That section sixteen be further amended by adding at the end of the section the following:

"That the Secretary of the Treasury is hereby authorized and directed to receive deposits of gold coin or of gold certificates with the Treasurer or any assistant treasurer of the United States when tendered by any Federal reserve bank or Federal reserve agent for credit to its or his account with the Federal Reserve Board. The Secretary shall prescribe by regulation the form of receipt to be issued by the Treasurer or Assistant Treasurer to the Federal reserve bank or Federal reserve agent making the deposit, and a duplicate of such receipt shall be delivered to the Federal Reserve Board by the Treasurer at Washington upon proper advices from any assistant treasurer that such deposit has been made. Deposits so made shall be held subject to the orders of the Federal Reserve Board and shall be payable in gold coin or gold certificates on the order of the Federal Reserve Board to any Federal reserve bank or Federal reserve agent at the Treasury or at the Subtreasury of the United States nearest the place of business of such Federal reserve bank or such Federal reserve agent: *Provided, however,* That any expense incurred in shipping

gold to or from the Treasury or Subtreasuries in order to make such payments, or as a result of making such payments, shall be paid by the Federal Reserve Board and assessed against the Federal reserve banks. The order used by the Federal Reserve Board in making such payments shall be signed by the governor or vice governor, or such other officers or members as the board may by regulation prescribe. The form of such order shall be approved by the Secretary of the Treasury.

"The expenses necessarily incurred in carrying out these provisions, including the cost of the certificates or receipts issued for deposits received, and all expenses incident to the handling of such deposits shall be paid by the Federal Reserve Board and included in its assessments against the several Federal reserve banks.

"Gold deposits standing to the credit of any Federal reserve bank with the Federal Reserve Board shall, at the option of said bank, be counted as part of the lawful reserve which it is required to maintain against outstanding Federal reserve notes, or as a part of the reserve it is required to maintain against deposits.

"Nothing in this section shall be construed as amending section six of the Act of March fourteenth, nineteen hundred, as amended by the Acts of March fourth, nineteen hundred and seven, March second, nineteen hundred and eleven, and June twelfth, nineteen hundred and sixteen, nor shall the provisions of this section be construed to apply to the deposits made or to the receipts or certificates issued under those Acts." [— *Stat. L.* —.]

For the Act of Dec. 23, 1913, ch. 260, § 16, amended by this section, see 1914 Supp. Fed. Stat. Ann. 275; 6 Fed. Stat. Ann. (2d ed.) 833.

The Act of March 14, 1900, ch. 41, § 6, mentioned in the last paragraph of the text, is given as amended in 2 Fed. Stat. Ann. (2d ed.) 349.

SEC. 9. [Registered bonds — repeal of provisions requiring — Federal reserve Act, sec. 17 amended.] That section seventeen be amended and reenacted so as to read as follows:

"SEC. 17. So much of the provisions of section fifty-one hundred and fifty-nine of the Revised Statutes of the United States, and section four of the Act of June twentieth, eighteen hundred and seventy-four, and section eight of the Act of July twelfth, eighteen hundred and eighty-two, and of any other provisions of existing statutes as require that before any national banking association shall be authorized to commence banking business it shall transfer and deliver to the Treasurer of the United States a stated amount of United States registered bonds, and so much of those provisions or of any other provisions of existing statutes as require any national banking association now or hereafter organized to maintain a minimum deposit of such bonds with the Treasurer is hereby repealed." [— *Stat. L.* —.]

For the Act of Dec. 23, 1913, ch. 260, § 17, amended by this section, see 1914 Supp. Fed. Stat. Ann. 277; 6 Fed. Stat. Ann. (2d ed.) 836.

SEC. 10. [Bank reserves — Federal reserve Act, sec. 19 amended.] That section nineteen be further amended and reenacted so as to read as follows:

"SEC. 19. Demand deposits within the meaning of this Act shall comprise all deposits payable within thirty days, and time deposits shall comprise all deposits payable after thirty days, all savings accounts and certificates of deposit which are subject to not less than thirty days' notice before payment, and all postal savings deposits.

"Every bank, banking association, or trust company which is or which becomes a member of any Federal reserve bank shall establish and maintain reserve balances with its Federal reserve bank as follows:

"(a) If not in a reserve or central reserve city, as now or hereafter defined, it shall hold and maintain with the Federal reserve bank of its district an actual net balance equal to not less than seven per centum of the aggregate amount of its demand deposits and three per centum of its time deposits.

"(b) If in a reserve city, as now or hereafter defined, it shall hold and maintain with the Federal reserve bank of its district an actual net balance equal to not less than ten per centum of the aggregate amount of its demand deposits and three per centum of its time deposits.

"(c) If in a central reserve city, as now or hereafter defined, it shall hold and maintain with the Federal reserve bank of its district an actual net balance equal to not less than thirteen per centum of the aggregate amounts of its demand deposits and three per centum of its time deposits.

"No member bank shall keep on deposit with any State bank or trust company which is not a member bank a sum in excess of ten per centum of its own paid-up capital and surplus. No member bank shall act as the medium or agent of a nonmember bank in applying for or receiving discounts from a Federal reserve bank under the provisions of this Act, except by permission of the Federal Reserve Board.

"The required balance carried by a member bank with a Federal reserve bank may, under the regulations and subject to such penalties as may be prescribed by the Federal Reserve Board, be checked against and withdrawn by such member bank for the purpose of meeting existing liabilities: *Provided, however,* That no bank shall at any time make new loans or shall pay any dividends unless and until the total balance required by law is fully restored.

"In estimating the balances required by this Act, the net difference of amounts due to and from other banks shall be taken as the basis for ascertaining the deposits against which required balances with Federal reserve banks shall be determined.

"National banks, or banks organized under local laws, located in Alaska or in a dependency or insular possession or any part of the United States outside the continental United States may remain nonmember banks, and shall in that event maintain reserves and comply with all the conditions now provided by law regulating them; or said banks may, with the consent of the Reserve Board, become member banks of any one of the reserve districts, and shall in that event take stock, maintain reserves, and be subject to all the other provisions of this Act." [— *Stat. L.* —.]

For the Act of Dec. 23, 1913, ch. 260, § 19, amended by this section, see 1914 Supp. Fed. Stat. Ann. 279; 6 Fed. Stat. Ann. (2d ed.) 838.

This section was affected, as to the disposition of reserves, by the first paragraph of the Act of Sept. 7, 1916, ch. 461, *supra*, p. 470.

Sec. 11. [Fee or gift to officer or employee — Federal reserve Act, sec. 22 amended.] That that part of section twenty-two which reads as follows: "Other than the usual salary or director's fees paid to any officer, director, or employee of a member bank and other than a reasonable fee paid by said bank to such officer, director, or employee for service rendered to such bank, no officer, director, employee, or attorney of a member bank shall be a beneficiary of or receive, directly or indirectly, any fee, commission, gift, or other consideration for or in connection with any transaction or business of the bank," be amended and reenacted so as to read as follows:

"Other than the usual salary or director's fee paid to any officer, director, employee, or attorney of a member bank, and other than a reasonable fee paid by said bank to such officer, director, employee, or attorney for services rendered to such bank, no officer, director, employee, or attorney of a member bank shall be a beneficiary of or receive, directly or indirectly, any fee, commission, gift, or other consideration for or in connection with any transaction or business of the bank: *Provided, however,* That nothing in this Act contained shall be construed to prohibit a director, officer, employee, or attorney from receiving the same rate of interest paid to other depositors for similar deposits made with such bank: *And provided further,* That notes, drafts, bills of exchange, or other evidences of debt executed or indorsed by directors or attorneys of a member bank may be discounted with such member bank on the same terms and conditions as other notes, drafts, bills of exchange, or evidences of debt upon the affirmative vote or written assent of at least a majority of the members of the board of directors of such member bank." [— *Stat. L.* —.]

For the Act of Dec. 23, 1913, ch. 260, § 22, amended by this Act, see 1914 Supp. Fed. Stat. Ann. 283; 6 Fed. Stat. Ann. (2d ed.) 926.

IV. DISSOLUTION AND RECEIVERSHIP

An Act To amend section fifty-two hundred and thirty-four of the Revised Statutes of the United States so as to permit the Comptroller of the Currency to deposit upon interest the assets of insolvent national banks in other national banks of the same or of an adjacent city or town.

[*Act of May 15, 1916, ch. 121, 39 Stat. L. 121.*]

[Insolvent national banks — deposit of assets — interest — R. S. sec. 5234 amended.] That section fifty-two hundred and thirty-four of the Revised Statutes of the United States be amended by adding at the end thereof the following:

"*Provided,* That the comptroller may, if he deems proper, deposit any of the money so made in any regular Government depository, or in any State or national bank either of the city or town in which the insolvent bank was located, or of a city or town as adjacent thereto as practicable; if such deposit is made he shall require the depository to deposit United States bonds or other satisfactory securities with the Treasurer of the

United States for the safe-keeping and prompt payment of the money so deposited. Such depository shall pay upon such money interest at such rate as the comptroller may prescribe, not less, however, than two per centum per annum upon the average monthly amount of such deposits." [39 Stat. L. 121.]

For R. S. sec. 5234, amended by this Act, see 5 Fed. Stat. Ann. 170; 6 Fed. Stat. Ann. (2d ed.) 851.

NATIONAL DEFENSE ACT.

See MILITIA; WAR DEPARTMENT AND MILITARY ESTABLISHMENT

NATIONAL DEFENSE SECRETS

See CRIMINAL LAW

NATIONAL GUARD

See MILITIA

NATIONAL PARKS

See PUBLIC PARKS

NATURALIZATION

Act of Aug. 11, 1916, ch. 316, 487.

Declarations of Intention — Validation, 487.

Act of June 12, 1917, ch. —, 487.

Sec. 1. Clerks of Courts and Assistants — Fees, 487.

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Sec. 1. Proceedings for Naturalization — Persons in Military or Naval Service — Fees — Former Act Amended, 488.

Seamen, 490.

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Declaration of Intention, When Dispensed With — Misinformation Regarding Citizenship Status, 491.

Alien Enemies — R. S. Secs. 2171, 3679, Repealed, 491.

Resumption of Citizenship by Persons in Military Service of Allies, 492.

Continuous Residence Within United States When Unnecessary, 493.

Sec. 2. Repeals and Amendments — Aliens Discharged from Military or Naval Service — Seamen — Aliens Believing Themselves to Be Citizens — Aliens of African Nativity and Descent, 493.

3. Certificate of Naturalization — Validation — "District" Amended, 495.

An Act To validate certain declarations of intention to become citizens of the United States.

[*Act of Aug. 11, 1916, ch. 316, 39 Stat. L. 505.*]

[**Declarations of intention — validation.**] That declarations of intention to become citizens of the United States filed prior to the passage of this Act in the counties of Cascade, Chouteau, Teton, Hill, Blaine, and Valley, State of Montana, under the act approved June twenty-ninth, nineteen hundred and six, entitled "An Act to establish a Bureau of Immigration and Naturalization and to provide for a uniform rule for the naturalization of aliens throughout the United States," as amended by the Acts of March fourth, nineteen hundred and nine, June twenty-fifth, nineteen hundred and ten, and March fourth, nineteen hundred and thirteen, are hereby declared to be as legal and valid as if such declarations of intention had been filed in the judicial district in which the declarants resided, as required by section four of said Act of June twenty-ninth, nineteen hundred and six, and that the petitions for naturalization dismissed on account of such invalidity in the declaration of intention shall be given a rehearing without additional cost, upon informal application therefor by the candidate for citizenship to the clerk of the court upon notice to the Bureau of Naturalization: *Provided*, That such declarations of intention shall not be by this Act further validated or legalized and that this Act shall apply only to those persons who have heretofore made homestead, desert land or timber and stone entries. [39 Stat. L. 505.]

For the Act of June 29, 1906, ch. 3592, mentioned in this Act, see 1909 Supp. Fed. Stat. Ann. 365.

For the Act of March 4, 1909, ch. 321, § 77, mentioned in the text, see 1909 Supp. Fed. Stat. Ann. 425.

For the Act of June 25, 1910, ch. 401, mentioned in the text, see 1912 Supp. Fed. Stat. Ann. 276.

For the Act of March 4, 1913, ch. 141, § 3, mentioned in the text see 1914 Supp. Fed. Stat. Ann. 242.

Said Act of June 29, 1906, ch. 3592, as amended by the Act of June 25, 1910, ch. 401, mentioned in the text, is given in 6 Fed. Stat. Ann. (2d ed.) 952.

The amending Act of March 4, 1909, ch. 321, § 77, mentioned in the text, was one of the sections of the Penal Code, and is given in 7 Fed. Stat. Ann. (2d ed.) 634.

The amending Act of March 4, 1913, ch. 141, § 3, mentioned in the text, is given in 6 Fed. Stat. Ann. (2d ed.) 939.

[**SEC. 1.**] [**Clerks of courts and assistants — fees.**] * * * That the whole amount allowed for a fiscal year to the clerk of a court and his assistants from naturalization fees and this appropriation or any similar appropriation made hereafter shall be based upon and not exceed the one-half of the gross receipts of said clerk from naturalization fees during the fiscal year immediately preceding, unless the naturalization business

of the clerk of any court during the year shall be in excess of the naturalization business of the preceding year, in which event the amount allowed may be increased to an amount equal to one-half the estimated gross receipts of the said clerk naturalization fees during the current fiscal year. [*— Stat. L. —.*]

This is from the Sundry Civil Appropriation Act of June 12, 1917, ch. —.

An Act To amend the naturalization laws and to repeal certain sections of the Revised Statutes of the United States and other laws relating to naturalization, and for other purposes.

[*Act of May 9, 1918, ch. —, — Stat. L. —.*]

[**SEC. 1.**] [**Proceedings for naturalization — persons in military or naval service — fees — former Act amended.**] That section four of the Act entitled "An Act to establish a Bureau of Immigration and Naturalization and to provide a uniform rule for the naturalization of aliens throughout the United States," approved June twenty-ninth, nineteen hundred and six, be, and is hereby, amended by adding seven new subdivisions as follows:

"Seventh. Any native-born Filipino of the age of twenty-one years and upward who has declared his intention to become a citizen of the United States and who has enlisted or may hereafter enlist in the United States Navy or Marine Corps or the Naval Auxiliary Service, and who, after service of not less than three years, may be honorably discharged therefrom, or who may receive an ordinary discharge with recommendation for reenlistment; or any alien, or any Porto Rican not a citizen of the United States, of the age of twenty-one years and upward, who has enlisted or entered or may hereafter enlist in or enter the armies of the United States, either the Regular or the Volunteer Forces, or the National Army, the National Guard or Naval Militia of any State, Territory, or the District of Columbia, or the State militia in Federal service, or in the United States Navy or Marine Corps, or in the United States Coast Guard, or who has served for three years on board of any vessel of the United States Government, or for three years on board of merchant or fishing vessels of the United States of more than twenty tons burden, and while still in the service on a reenlistment or reappointment, or within six months after an honorable discharge or separation therefrom, or while on furlough to the Army Reserve or Regular Army Reserve after honorable service, may, on presentation of the required declaration of intention petition for naturalization without proof of the required five years' residence within the United States if upon examination by the representative of the Bureau of Naturalization, in accordance with the requirements of this subdivision it is shown that such residence can not be established; any alien serving in the military or naval service of the United States during the time this country is engaged in the present war may file his petition for naturalization without making the preliminary declaration of intention and without proof of the required five years' residence within the United States; any alien declarant who has served in the United States Army or Navy, or the

Philippine Constabulary, and has been honorably discharged therefrom, and has been accepted for service in either the military or naval service of the United States on the condition that he becomes a citizen of the United States, may file his petition for naturalization upon proof of continuous residence within the United States for the three years immediately preceding his petition, by two witnesses, citizens of the United States, and in these cases only residence in the Philippine Islands and the Panama Canal Zone by aliens may be considered residence within the United States, and the place of such military service shall be construed as the place of residence required to be established for purposes of naturalization; and any alien, or any person owing permanent allegiance to the United States embraced within this subdivision, may file his petition for naturalization in the most convenient court without proof of residence within its jurisdiction, notwithstanding the limitation upon the jurisdiction of the courts specified in section three of the Act of June twenty-ninth, nineteen hundred and six, provided he appears with his two witnesses before the appropriate representative of the Bureau of Naturalization and passes the preliminary examination hereby required before filing his petition for naturalization in the office of the clerk of the court, and in each case the record of this examination shall be offered in evidence by the representative of the Government from the Bureau of Naturalization and made a part of the record at the original and any subsequent hearings; and, except as otherwise herein provided, the honorable discharge certificate of such alien, or person owing permanent allegiance to the United States, or the certificate of service showing good conduct, signed by a duly authorized officer, or by the masters of said vessels, shall be deemed prima facie evidence to satisfy all of the requirements of residence within the United States and within the State, Territory, or the District of Columbia, and good moral character required by law, when supported by the affidavits of two witnesses, citizens of the United States, identifying the applicant as the person named in the certificate or honorable discharge, and in those cases only where the alien is actually in the military or naval service of the United States, the certificate of arrival shall not be filed with the petition for naturalization in the manner prescribed; and any petition for naturalization filed under the provisions of this subdivision may be heard immediately, notwithstanding the law prohibits the hearing of a petition for naturalization during thirty days preceding any election in the jurisdiction of the court. Any alien who, at the time of the passage of this Act, is in the military service of the United States, who may not be within the jurisdiction of any court authorized to naturalize aliens, may file his petition for naturalization without appearing in person in the office of the clerk of the court and shall not be required to take the prescribed oath of allegiance in open court. The petition shall be verified by the affidavits of at least two credible witnesses who are citizens of the United States, and who shall prove in their affidavits the portion of the residence that they have personally known the applicant to have resided within the United States. The time of military service may be established by the affidavits of at least two other citizens of the United States, which, together with the oath of allegiance, may be taken in accordance with the terms of section seventeen hundred and fifty of the Revised Statutes of the United States after notice from and under regulations of the Bureau of Naturalization. Such affidavits and oath of

allegiance shall be admitted in evidence in any original or appellate naturalization proceeding without proof of the genuineness of the seal or signature or of the official character of the officer before whom the affidavit and oath of allegiance were taken, and shall be filed by the representative of the Government from the Bureau of Naturalization at the hearing as provided by section eleven of the Act of June twenty-ninth, nineteen hundred and six. Members of the Naturalization Bureau and Service may be designated by the Secretary of Labor to administer oaths relating to the administration of the naturalization law; and the requirement of section ten of notice to take depositions to the United States attorneys is repealed, and the duty they perform under section fifteen of the Act of June twenty-ninth, nineteen hundred and six (Thirty-fourth Statutes at Large, part one, page five hundred and ninety-six), may also be performed by the Commissioner or Deputy Commissioner of Naturalization: *Provided*, That it shall not be lawful to make a declaration of intention before the clerk of any court on election day or during the period of thirty days preceding the day of holding any election in the jurisdiction of the court: *Provided further*, That service by aliens upon vessels other than of American registry, whether continuous or broken, shall not be considered as residence for naturalization purposes within the jurisdiction of the United States, and such aliens can not secure residence for naturalization purposes during service upon vessels of foreign registry.

During the time when the United States is at war no clerk of a United States court shall charge or collect a naturalization fee from an alien in the military service of the United States for filing his petition or issuing the certificate of naturalization upon admission to citizenship, and no clerk of any State court shall charge or collect any fee for this service unless the laws of the State require such charge to be made, in which case nothing more than the portion of the fee required to be paid to the State shall be charged or collected. A full accounting for all of these transactions shall be made to the Bureau of Naturalization in the manner provided by section thirteen of the Act of June twenty-ninth, nineteen hundred and six. [— *Stat. L.* —.]

For Act of June 29, 1906, ch. 3592, amended by this Act, see 1909 Supp. Fed. Stat. Ann. 365; 6 Fed. Stat. Ann. (2d ed.) 952.

Temporary naturalization.—*An alien soldier in the service of the army, who upon his examination states that it is not his intention to reside permanently in the United States, but that it is his intention, upon his discharge from the service, to return to his native country and remain there permanently, is not entitled to naturalization, either under this act or under the general naturalization statutes, as the intention of Congress that there*

should be no naturalizations for temporary purposes may be deduced from the Act of March 2, 1907, ch. 2534, sec. 2 (in title CITIZENSHIP, 1909 Supp. Fed. Stat. Ann. 68, and 2 Fed. Stat. Ann. (2d ed.) 122), which provides for a forfeiture of naturalization if the naturalized citizen shall have resided for two years in the foreign state from which he came. In re Naturalization of Aliens, etc., (E. D. Mo. 1918) 250 Fed. 316.

“ Eighth. [Seamen.] That every seaman, being an alien, shall, after his declaration of intention to become a citizen of the United States, and after he shall have served three years upon such merchant or fishing vessels of the United States, be deemed a citizen of the United States for the purpose of serving on board any such merchant or fishing vessel of the United States, anything to the contrary in any Act of Congress notwithstanding:

but such seaman shall, for all purposes of protection as an American citizen, be deemed such after the filing of his declaration of intention to become such citizen: *Provided*, That nothing contained in this Act shall be taken or construed to repeal or modify any portion of the Act approved March fourth, nineteen hundred and fifteen. (Thirty-eight Statutes at Large, part one, page eleven hundred and sixty-four, chapter one hundred and fifty-three), being an Act to promote the welfare of American seamen. [— *Stat. L.* —.]

For Act of March 4, 1915, ch. 153, see 1916 Supp. Fed. Stat. Ann. 226; 9 Fed. Stat. Ann. (2d ed.) 126.

" Ninth. [Promoting instruction in citizenship.] That for the purpose of carrying on the work of the Bureau of Naturalization of sending the names of the candidates for citizenship to the public schools and otherwise promoting instruction and training in citizenship responsibilities of applicants for naturalization, as provided in this subdivision, authority is hereby given for the reimbursement of the printing and binding appropriation of the Department of Labor upon the records of the Treasury Department from the naturalization fees deposited in the Treasury through the Bureau of Naturalization for the cost of publishing the citizenship textbook prepared and to be distributed by the Bureau of Naturalization to those candidates for citizenship only who are in attendance upon the public schools, such reimbursement to be made upon statements by the Commissioner of Naturalization of books actually delivered to such student candidates for citizenship, and a monthly naturalization bulletin, and in this duty to secure the aid of and cooperate with the official State and national organizations, including those concerned with vocational education and including personal services in the District of Columbia, and to aid the local Army exemption boards and cooperate with the War Department in locating declarants subject to the Army draft and expenses incidental thereto. [— *Stat. L.* —.]

" Tenth. [Declaration of intention when dispensed with — misinformation regarding citizenship status.] That any person not an alien enemy, who resided uninterruptedly within the United States during the period of five years next preceding July first, nineteen hundred and fourteen, and was on that date otherwise qualified to become a citizen of the United States, except that he had not made the declaration of intention required by law and who during or prior to that time, because of misinformation regarding his citizenship status erroneously exercised the rights and performed the duties of a citizen of the United States in good faith, may file the petition for naturalization prescribed by law without making the preliminary declaration of intention required of other aliens, and upon satisfactory proof to the court that he has so acted may be admitted as a citizen of the United States upon complying in all respects with the other requirements of the naturalization law. [— *Stat. L.* —.]

" Eleventh. [Alien enemies — R. S. secs. 2171, 3679 repealed.] No alien who is a native, citizen, subject, or denizen of any country, State, or

sovereignty with which the United States is at war shall be admitted to become a citizen of the United States unless he made his declaration of intention not less than two nor more than seven years prior to the existence of the state of war, or was at that time entitled to become a citizen of the United States, without making a declaration of intention, or unless his petition for naturalization shall then be pending and is otherwise entitled to admission, notwithstanding he shall be an alien enemy at the time and in the manner prescribed by the laws passed upon that subject: *Provided*, That no alien embraced within this subdivision shall have his petition for naturalization called for a hearing, or heard, except after ninety days' notice given by the clerk of the court to the Commissioner or Deputy Commissioner of Naturalization to be present, and the petition shall be given no final hearing except in open court and after such notice to the representative of the Government from the Bureau of Naturalization, whose objection shall cause the petition to be continued from time to time for so long as the Government may require: *Provided, however*, That nothing herein contained shall be taken or construed to interfere with or prevent the apprehension and removal, agreeably to law, of any alien enemy at any time previous to the actual naturalization of such alien; and section twenty-one hundred and seventy-one of the Revised Statutes of the United States is hereby repealed: *Provided further*, That the President of the United States may, in his discretion, upon investigation and report by the Department of Justice fully establishing the loyalty of any alien enemy not included in the foregoing exemption, except such alien enemy from the classification of alien enemy, and thereupon he shall have the privilege of applying for naturalization; and for the purposes of carrying into effect the provisions of this section, including personal services in the District of Columbia, the sum of \$400,000 is hereby appropriated, to be available until June thirtieth, nineteen hundred and nineteen, including travel expenses for members of the Bureau of Naturalization and its field service only, and the provisions of section thirty-six hundred and seventy-nine of the Revised Statutes shall not be applicable in any way to this appropriation. [— *Stat. L.* —.]

For R. S. sec. 2171 here repealed, see 5 Fed. Stat. Ann. 208; 6 Fed. Stat. Ann. (2d ed.) 947.

For R. S. sec. 3679, here repealed, see 10 Fed. Stat. Ann. 84; 3 Fed. Stat. Ann. (2d ed.) 138.

“ Twelfth. [Resumption of citizenship by persons in military service of allies.] That any person who, while a citizen of the United States and during the existing war in Europe, entered the military or naval service of any country at war with a country with which the United States is now at war, who shall be deemed to have lost his citizenship by reason of any oath or obligation taken by him for the purpose of entering such service, may resume his citizenship by taking the oath of allegiance to the United States prescribed by the naturalization law and regulations, and such oath may be taken before any court of the United States or of any State authorized by law to naturalize aliens or before any consul of the United States, and certified copies thereof shall be sent by such court or consul to the Department of State and the Bureau of Naturalization, and the Act (Public

fifty-five, Sixty-fifth Congress, approved October fifth, nineteen hundred and seventeen), is hereby repealed. [— *Stat. L.* —.]

The Act of Oct. 5, 1917, ch. —, — *Stat. L.* —, repealed by the text, was as follows:

"That any person formerly an American citizen, who may be deemed to have expatriated himself under the provisions of the first paragraph of section two of the Act approved March second, nineteen hundred and seven, entitled 'An Act in reference to the expatriation of citizens and their protection abroad,' by taking, since August first, nineteen hundred and fourteen, an oath of allegiance to any foreign State engaged in war with a country with which the United States is at war, and who took such oath in order to be enabled to enlist in the armed forces of such foreign State, and who actually enlisted in such armed forces, and who has been or may be duly and honorably discharged from such armed forces, may, upon complying with the provisions of this Act, reassume and acquire the character and privileges of a citizen of the United States: *Provided, however,* That no obligation in the way of pensions or other grants because of service in the army or navy of any other country, or disabilities incident thereto, shall accrue to the United States.

"Any such person who desires so to reacquire and reassume the character and privileges of a citizen of the United States shall, if abroad, present himself before a consular officer of the United States, or, if in the United States, before any court authorized by law to confer American citizenship upon aliens, shall offer satisfactory evidence that he comes within the terms of this Act, and shall take an oath declaring his allegiance to the United States and agreeing to support the Constitution thereof and abjuring and disclaiming allegiance to such foreign State and to every foreign prince, potentate, State, or sovereignty. The consular officer or court officer having jurisdiction shall thereupon issue in triplicate a certificate of American citizenship, giving one copy to the applicant, retaining one copy for his files, and forwarding one copy to the Secretary of Labor. Thereafter such person shall in all respects be deemed to have acquired the character and privileges of a citizen of the United States. The Secretary of State and the Secretary of Labor shall jointly issue regulations for the proper administration of this Act."

"Thirteenth. [Continuous residence within United States when unnecessary.] That any person who is serving in the military or naval forces of the United States at the termination of the existing war, and any person who before the termination of the existing war may have been honorably discharged from the military or naval services of the United States on account of disability incurred in line of duty, shall if he applies to the proper court for admission as a citizen of the United States, be relieved from the necessity of proving that immediately preceding the date of his application he has resided continuously within the United States the time required by law of other aliens, or within the State, Territory, or the District of Columbia for the year immediately preceding the date of his petition for naturalization, but his petition for naturalization shall be supported by the affidavits of two credible witnesses, citizens of the United States, identifying the petitioner as the person named in the certificate of honorable discharge, which said certificate may be accepted as evidence of good moral character required by law, and he shall comply with the other requirements of the naturalization law." [— *Stat. L.* —.]

SEC. 2. [Repeals and amendments — aliens discharged from military or naval service — seamen — aliens believing themselves to be citizens — aliens of African nativity and descent.] That the following provisions of law be, and they are hereby, repealed: Sections twenty-one hundred and sixty-six and twenty-one hundred and seventy-four of the Revised Statutes of the United States of America and so much of an Act approved July

twenty-sixth, eighteen hundred and ninety-four, entitled "An Act making provisions for the naval service for the fiscal year ending June thirtieth, eighteen hundred and ninety-five, and for other purposes," being chapter one hundred and sixty-five of the laws of eighteen hundred and ninety-four (Twenty-eighth Statutes at Large, page one hundred and twenty-four), reading as follows: "Any alien of the age of twenty-one years and upward who has enlisted or may enlist in the United States Navy or Marine Corps and has served or may hereafter serve five consecutive years in the United States Navy or one enlistment in the United States Marine Corps and has been or may hereafter be honorably discharged, shall be admitted to become a citizen of the United States upon his petition without any previous declaration of his intention to become such; and the court admitting such alien shall, in addition to proof of good moral character, be satisfied by competent proof of such person's service in and honorable discharge from the United States Navy or Marine Corps;" and so much of an Act approved June thirtieth, nineteen hundred and fourteen, entitled "An Act making appropriations for the naval service for the fiscal year ending June thirtieth, nineteen hundred and fifteen, and for other purposes," being chapter one hundred and thirty of the laws of nineteen hundred and fourteen (Thirty-eighth Statutes at Large, part one, page three hundred and ninety-two), reading as follows: "Any alien of the age of twenty-one years and upwards who may under existing law become a citizen of the United States, who has served or may hereafter serve for one enlistment of not less than four years in the United States Navy or Marine Corps, and who has received therefrom an honorable discharge or an ordinary discharge, with recommendation for reenlistment, or who has completed four years in the Revenue-Cutter Service and received therefrom an honorable discharge or an ordinary discharge with recommendation for reenlistment, or who has completed four years of honorable service in the naval auxiliary service, shall be admitted to become a citizen of the United States upon his petition without any previous declaration of his intention to become such, and without proof of residence on shore, and the court admitting such alien shall, in addition to proof of good moral character, be satisfied by competent proof from naval or revenue-cutter sources of such service: *Provided*, That an honorable discharge from the Navy, Marine Corps, Revenue-Cutter Service, or the Naval Auxiliary Service, or an ordinary discharge with recommendation for reenlistment, shall be accepted as proof of good moral character: *Provided further*, That any court which now has or may hereafter be given jurisdiction to naturalize aliens as citizens of the United States may immediately naturalize any alien applying under and furnishing the proof prescribed by the foregoing provisions"; and so much of section three of an Act approved June twenty-fifth, nineteen hundred and ten (Thirty-fourth Statutes at Large, part one, page six hundred and thirty), reading as follows: "That paragraph two of section four of an Act entitled 'An Act to establish a Bureau of Immigration and Naturalization, and to provide for a uniform rule for the naturalization of aliens throughout the United States,' approved June twenty-ninth, nineteen hundred and six, be amended by adding, after the proviso in paragraph two of section four of said Act, the following: *Provided further*, That any person belonging to the class of persons authorized and qualified under

existing law to become a citizen of the United States, who has resided constantly in the United States during a period of five years next preceding May first, nineteen hundred and ten, who, because of misinformation in regard to his citizenship or the requirements of the law governing the naturalization of citizens has labored and acted under the impression that he was or could become a citizen of the United States and has in good faith exercised the rights or duties of a citizen or intended citizen of the United States because of such wrongful information and belief may, upon making a showing of such facts satisfactory to a court having jurisdiction to issue papers of naturalization to an alien, and the court in its judgment believes that such person has been for a period of more than five years entitled upon proper proceedings to be naturalized as a citizen of the United States, receive from the said court, a final certificate of naturalization, and said court may issue such certificate without requiring proof of former declaration by or on part of such person of their intention to become a citizen of the United States, but such applicant for naturalization shall comply in all other respects with the law relative to the issuance of final papers of naturalization to aliens."

That all Acts or parts of Acts inconsistent with or repugnant to the provisions of this Act are hereby repealed; but nothing in this Act shall repeal or in any way enlarge section twenty-one hundred and sixty-nine of the Revised Statutes, except as specified in the seventh subdivision of this Act and under the limitation therein defined: *Provided*, That for the purposes of the prosecution of all crimes and offenses against the naturalization laws of the United States which may have been committed prior to this Act the statutes and laws hereby repealed shall remain in full force and effect: *Provided further*, That as to all aliens who, prior to January first, nineteen hundred, served in the Armies of the United States and were honorably discharged therefrom, section twenty-one hundred and sixty-six of the Revised Statutes of the United States shall be and remain in full force and effect, anything in this Act to the contrary notwithstanding. [— *Stat. L. —*.]

For R. S. secs. 2166 and 2174, repealed by this section, see 5 Fed. Stat. Ann. 206; 210; 6 Fed. Stat. Ann. (2d ed.) 941, 950.

For Act of July 26, 1894, see 5 Fed. Stat. Ann. 206; 6 Fed. Stat. Ann. (2d ed.) 1004.

For Act of June 30, 1914, see 1916 Supp. Fed. Stat. Ann. 167; 6 Fed. Stat. Ann. (2d ed.) 1004.

For Act of June 25, 1910, § 3, see 1912 Supp. Fed. Stat. Ann. 277; 6 Fed. Stat. Ann. (2d ed.) 959.

For R. S. 2169, mentioned in the text, see 5 Fed. Stat. Ann. 207; 6 Fed. Stat. Ann. (2d ed.) 944.

Sec. 3. [Certificate of naturalization — validation — "District" amended.] That all certificates of naturalization granted by courts of competent jurisdiction prior to December thirty-first, nineteen hundred and eighteen, upon petitions for naturalization filed prior to January thirty-first, nineteen hundred and eighteen, upon declarations of intention filed prior to September twenty-seventh, nineteen hundred and six, are hereby declared to be valid in so far as the declaration of intention is concerned, but shall not be by this Act further validated or legalized.

The word "District" in sections four, ten, and twenty-seven of the Act which this Act amends is hereby amended to read "the District of Columbia." [— *Stat. L.* —.]

For Act of June 29, 1906, see 1909 Supp. Fed. Stat. Ann. 365; 6 Fed. Stat. Ann. (2d ed.) 952.

NAVAL ACADEMY

Act of Aug. 29, 1916, ch. 417, 496.

Sec. 1. Midshipmen — Increase of Number — Appointment of Enlisted Men, 496.

Admission of Filipinos, 496.

Professors, etc. — Appointment — Compensation — Report to Congress, 497.

Board of Visitors — Appointment — Number — Pay, 497.

Act of March 4, 1917, ch. 180, 497.

Midshipmen — Increase of Number — Appointment of Enlisted Men, 497.

Act of Dec. 20, 1917, ch. —, 498.

Sec. 1. Midshipmen — Increase of Number, 498.

2. Repeal, 498.

Act of April 2, 1918, ch. —, 498.

Course of Instruction — Reduction, 498.

Act of May 14, 1918, ch. —, 499.

Age Limits of Candidates, 499.

[SEC. 1.] [Midshipmen — increase of number — appointment of enlisted men.] * * * Hereafter in addition to the appointment of midshipmen to the United States Naval Academy, as now prescribed by law, the President is hereby allowed fifteen appointments annually instead of ten as now prescribed by law, and the Secretary of the Navy is allowed twenty-five appointments annually, instead of fifteen as now prescribed by law, the latter to be appointed from the enlisted men of the Navy who are citizens of the United States, and not more than twenty years of age on the date of entrance to the Naval Academy, and who shall have served not less than one year as enlisted men on the date of entrance: *Provided*, That such appointments shall be made in the order of merit from candidates who have in competition with each other passed the mental examination now or hereafter required by law for entrance to the Naval Academy, and who passed the physical examinations required before entrance under existing laws. [39 *Stat. L.* 576.]

The foregoing paragraph and the following three paragraphs of the text are from the Naval Appropriation Act of Aug. 29, 1916, ch. 417.

The number of appointments allowed the Secretary of the Navy was increased by the first paragraph of the Act of March 4, 1917, ch. 180, *infra*, p. 497.

[Admission of Filipinos.] * * * That hereafter the Secretary of the Navy is authorized to permit not exceeding four Filipinos, to be designated, one for each class, by the Governor General of the Philippine Islands to receive instruction at the United States Naval Academy at Annapolis,

Maryland: *Provided*, That the Filipinos undergoing instruction, as herein authorized, shall receive the same pay, allowances, and emoluments, to be paid out of the same appropriations, and shall be subject to the same rules and regulations governing admission, attendance, discipline, resignation, discharge, dismissal, and graduation as are authorized by law and regulation for midshipmen appointed from the United States, but the Filipino midshipmen herein authorized shall not be entitled to appointment to any commissioned office in the United States Navy by reason of their graduation from the Naval Academy. [39 Stat. L. 576.]

See the notes to the preceding paragraph of the text.

[Professors, etc.— appointment — compensation — report to Congress.]

* * * That the Secretary of the Navy is authorized to employ at the Naval Academy such number of professors and instructors, including one professor as librarian, as, in his opinion, may be necessary for the proper instruction of the midshipmen; and that professors and instructors so employed shall receive such compensation for their services as may be prescribed by the Secretary of the Navy: *Provided further*, That the total amount so paid shall not exceed \$175,000 annually: *And provided further*, That the Secretary of the Navy shall report to Congress each year the number of professors and instructors so employed and the amount of compensation prescribed for each. [39 Stat. L. 607.]

See the note to the first paragraph of this Act, *supra*, p. 496.

[Board of visitors — appointment — number — pay.] * * *

From and after the passage of this Act there shall be appointed every year in the following manner, a Board of Visitors, to visit the academy, the date of the annual visit of the board aforesaid to be fixed by the Secretary of the Navy: Seven persons shall be appointed by the President and four Senators and five Members of the House of Representatives shall be designated as visitors by the Vice President or President pro tempore of the Senate and the Speaker of the House of Representatives, respectively, in the month of January of each year. The chairman of the Committee on Naval Affairs of the Senate and chairman of the Committee on Naval Affairs of the House of Representatives shall be ex officio members of said board.

Each member of said board shall receive while engaged upon duties as a member of the board not to exceed \$5 a day and actual expenses of travel by the shortest mail routes. [39 Stat. L. 608.]

See the note to the first paragraph of this Act, *supra*, p. 496.

[Midshipmen — increase of number — appointment of enlisted men.]

* * * Hereafter, in addition to the appointment of midshipmen to the United States Naval Academy, as now prescribed by law, the Secretary of the Navy is allowed one hundred appointments annually, instead of twenty-five as now prescribed by law, to be appointed from the enlisted men of the Navy who are citizens of the United States, and not more than

twenty years of age on the date of entrance to the Naval Academy, and who shall have served not less than one year as enlisted men on the date of entrance: *Provided*, That such appointments shall be made in the order of merit from candidates who have, in competition with each other, passed the mental examination now or hereafter required by law for entrance to the Naval Academy, and who passed the physical examination before entrance under existing laws. [39 Stat. L. 1182.]

This is from the Naval Appropriation Act of March 4, 1917, ch. 180.
The number of appointments allowed the Secretary of the Navy was previously fixed at twenty-five by the Act of Aug. 29, 1916, ch. 417, § 1, *supra*, p. 496.

An Act To increase the number of midshipmen at the United States Naval Academy.

[Act of Dec. 20, 1917, ch. —, — Stat. L. —.]

[SEC. 1.] [Midshipmen — increase of number.] That hereafter there shall be allowed at the United States Naval Academy five midshipmen for each Senator, Representative, and Delegate in Congress, one for Porto Rico, two for the District of Columbia, fifteen appointed each year at large, and one hundred appointed annually from enlisted men of the Navy, as now authorized by law. [— Stat. L. —.]

The number of appointments allowed the Secretary of the Navy was increased by the Act of Aug. 29, 1916, ch. 417, § 1, *supra*, p. 496, and the Act of March 4, 1917, ch. 180, given in the preceding paragraph of the text.

The number of midshipmen had previously been increased by the Act of Feb. 15, 1916, ch. 24, 39 Stat. L. 9, which was as follows:

[SEC. 1.] "That hereafter there shall be allowed at the United States Naval Academy three midshipmen for each Senator, Representative, and Delegate in Congress, one for Porto Rico, two for the District of Columbia, ten appointed each year at large, and fifteen appointed annually from enlisted men of the Navy as now authorized by law.

"SEC. 2. That all Acts or parts of Acts inconsistent with the provisions of this Act are hereby repealed."

The number of enlisted men had also been previously increased by the Act of April 25, 1917, ch. —, — Stat. L. —, which was as follows: "That, in addition to the number of midshipmen now authorized by law, there shall be appointed during the period from the date of passage of this Act until September first, nineteen hundred and eighteen, one additional midshipman for each Senator, Representative, and Delegate in Congress. Nominations shall be made for these vacancies by the Senators, Representatives, and Delegates concerned by any regular or special examination that may be ordered before that date."

SEC. 2. [Repeal.] That all Acts or parts of Acts inconsistent with the provisions of this Act are hereby repealed. [— Stat. L. —.]

An Act To authorize the President to reduce temporarily the course of instruction at the United States Naval Academy.

[Act of April 2, 1918, ch. —, — Stat. L. —.]

[Course of instruction — reduction.] That the President be, and he is hereby, authorized, until August first, nineteen hundred and twenty-one, to reduce, in his discretion, the course of instruction at the United States

Naval Academy from four to three years and to graduate classes which have completed such reduced courses of instruction. [*— Stat. L. —.*]

The course of instruction had previously been reduced by the Naval Appropriation Act of March 4, 1918, ch. 180, 39 Stat. L. 1182, which provided as follows: "The President, in his discretion, is authorized to reduce the course of instruction at the Naval Academy from four to three years for a period of two years from the date of the approval of this Act, and may during said two years graduate classes which have completed a three-year course."

An Act To fix the age limits for candidates for admission to the United States Naval Academy.

[*Act of May 14, 1918, ch. —, — Stat. L. —.*]

[**Age limits of candidates.**] That hereafter all candidates for admission to the Naval Academy must be not less than sixteen years of age nor more than twenty years of age on April first of the calendar year in which they enter the academy: *Provided*, That the foregoing shall not apply to candidates for midshipmen designated for entrance to the academy in nineteen hundred and eighteen. [*— Stat. L. —.*]

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I. GENERAL PROVISIONS RELATING TO THE NAVY

[SEC. 1.] [Bureau of Construction and Repair — services of draftsmen, etc.— compensation — report.] * * * The services of draftsmen and such other technical services as the Secretary of the Navy may deem necessary may be employed only in the Bureau of Construction and Repair and at rates of compensation not exceeding those paid hereunder prior to January first, nineteen hundred and fifteen, to carry into effect the various appropriations for "Increase of the Navy" and "Construction and Repair," to be paid from the appropriation "Construction and Repair": * * * A statement of the persons employed hereunder, their duties, and the compensation paid to each shall be made to Congress each year in the annual estimates. [39 Stat. L. 97.]

This and the following paragraph of the text are from the Legislative, Executive, and Judicial Appropriation Act of May 10, 1916, ch. 117.

[Bureau of Ordnance — services of clerks, draftsmen, etc.— compensation — report.] * * * The services of clerks, draftsmen, and such other technical services as the Secretary of the Navy may deem necessary may be employed only in the Bureau of Ordnance, and at rates of compensation not exceeding those paid hereunder prior to January first, nineteen hundred and fifteen, to carry into effect the various appropriations for "Increase of the Navy" and "Ordnance and Ordnance Stores," to be paid from the appropriation "Ordnance and Ordnance Stores": * * * A statement of the persons employed hereunder, their duties, and the compensation paid to each, shall be made to Congress each year in the annual estimates. [39 Stat. L. 97.]

See the note to the preceding paragraph of the text.

An Act To authorize and empower officers and enlisted men of the Navy and Marine Corps to serve under the Government of the Republic of Haiti, and for other purposes.

[Act of June 12, 1916, ch. 140, 39 Stat. L. 223.]

[SEC. 1.] [Detail of officers and enlisted men to assist Republic of Haiti.] That the President of the United States be, and he is hereby,

authorized, in his discretion, to detail to assist the Republic of Haiti such officers and enlisted men of the United States Navy and the United States Marine Corps as may be mutually agreed upon by him and the President of the Republic of Haiti: *Provided*, That the officers and enlisted men so detailed be, and they are hereby, authorized to accept from the Government of Haiti the said employment with compensation and emoluments from the said Government of Haiti, subject to the approval of the President of the United States. [39 Stat. L. 223.]

SEC. 2. [Power of substitution.] That to insure the continuance of this work during such time as may be desirable; the President may have the power of substitution in the case of the termination of the detail of an officer or enlisted man for any cause: *Provided*, That during the continuance of such details the officers and enlisted men shall continue to receive the pay and allowances of their ranks or ratings in the Navy or Marine Corps. [39 Stat. L. 224.]

Section 3 of this Act, relating to increase of the Marine Corps, is given *infra*, p. 562.

SEC. 4. [Navy increase.] That the following increase in the United States Navy be, and the same is hereby, authorized: One surgeon, two passed assistant surgeons, five hospital stewards, and ten hospital apprentices, first class. [39 Stat. L. 224.]

SEC. 5. [Officers and enlisted men detailed to Haiti — credit for service rendered.] That officers and enlisted men of the Navy and Marine Corps detailed for duty to assist the Republic of Haiti shall be entitled to the same credit for such service, for longevity, retirement, foreign service, pay, and for all other purposes, that they would receive if they were serving with the Navy or with the Marine Corps. [39 Stat. L. 224.]

An Act Making appropriations for the naval service for the fiscal year ending June thirtieth, nineteen hundred and seventeen, and for other purposes.

[Act of August 29, 1916, ch. 417, 39 Stat. L. 556.]

[SEC. 1.] [Civilian employees abroad — leave of absence with pay.]
• • • That hereafter any civilian employee of the Navy Department who is a citizen of the United States and employed at any station outside the continental limits of the United States may, in the discretion of the Secretary of the Navy, after at least two years' continuous, faithful, and satisfactory service abroad, and subject to the interests of the public service, be granted accrued leave of absence, with pay, for each year of service, and if an employee should elect to postpone the taking of any or all of the leave to which he may be entitled in pursuance hereof such leave may be allowed to accumulate for a period of not exceeding four years, the rate of pay for accrued leave to be the rate obtaining at the time the leave is granted. [39 Stat. L. 557.]

[Insane interned persons and prisoners of war — admission to Government hospital.] * * * Hereafter interned persons and prisoners of war, under the jurisdiction of the Navy Department, who are or may become insane, shall be entitled to admission for treatment to the Government Hospital for the Insane. [39 Stat. L. 558.]

[Chief of naval operations — rank — pay.] * * * Hereafter the Chief of Naval Operations, while so serving as such Chief of Naval Operations, shall have the rank and title of admiral, to take rank next after The Admiral of the Navy, and shall, while so serving as Chief of Naval Operations, receive the pay of \$10,000 per annum and no allowances. All orders issued by the Chief of Naval Operations in performing the duties assigned him shall be performed under the authority of the Secretary of the Navy, and his orders shall be considered as emanating from the Secretary, and shall have full force and effect as such. To assist the Chief of Naval Operations in performing the duties of his office there shall be assigned for this exclusive duty not less than fifteen officers of and above the rank of lieutenant commander of the Navy or major of the Marine Corps: *Provided*, That if an officer of the grade of captain be appointed Chief of Naval Operations he shall have the rank and title of admiral, as above provided, while holding that position: *Provided further*, That should an officer, while serving as Chief of Naval Operations, be retired from active service he shall be retired with the lineal rank and the retired pay to which he would be entitled had he not been serving as Chief of Naval Operations. [39 Stat. L. 558.]

[Detail of certain officers.] * * * Hereafter an officer of the Corps of Civil Engineers may be detailed as assistant to the Chief of the Bureau of Yards and Docks and an officer of the Corps of Naval Constructors as assistant to the Chief of Bureau of Construction and Repair; and, in case of death, resignation, absence, or sickness of the chief of Bureau, shall, unless otherwise directed by the President, as provided by section one hundred and seventy-nine of the Revised Statutes, perform the duties of such chief until his successor is appointed or such absence or sickness shall cease; and hereafter an officer of the line of the Navy or Marine Corps may be detailed as assistant to the Judge Advocate General of the Navy, who shall, under similar conditions, perform the duties of the Judge Advocate General. [39 Stat. L. 558.]

For R. S. sec. 179, mentioned in the text, see 3 Fed. Stat. Ann. 62; 3 Fed. Stat. Ann. (2d ed.) 256.

[Drafting, technical and inspection force — expenditure for pay.] * * * Hereafter such amount may be expended annually for pay of drafting, technical, and inspection force from the several lump sum appropriations in which specific authority for such expenditure is given, as the Secretary of the Navy may deem necessary within the limitation of appropriation provided for such service in said lump sum appropriations at such rates of compensation as the Secretary of the Navy may prescribe; and the Secretary of the Navy shall each year, in the annual estimates, report

to Congress the number of persons so employed, their duties, and the amount paid to each. [39 Stat. L. 558.]

Following this paragraph there appeared in this Act a paragraph as follows: "That any person who may hereafter enlist in the Navy for the first time shall, in time of peace, if he so elects, receive discharge therefrom without cost to himself during the month of June or December, respectively, following the completion of one year's service at sea. An honorable discharge may be granted under this provision; but when so granted shall not entitle the holder, in case of reenlistment, to the benefits of an honorable discharge granted upon completion of an enlistment: *And provided further*, That, at the time, he is not under charges, or undergoing punishment, or in debt to the Government." [39 Stat. L. 560.]

This was repealed by the Act of March 4, 1917, ch. 180, 39 Stat. L. 1171, in the following terms: "So much of the Act entitled 'An Act making appropriations for the Naval Service for the fiscal year ending June thirtieth, nineteen hundred and seventeen,' and approved August twenty-ninth, nineteen hundred and sixteen, which reads as follows, is hereby repealed:

"*Provided*, That any person who may hereafter enlist in the Navy for the first time shall, in time of peace, if he so elects, receive discharge therefrom without cost to himself during the month of June or December, respectively, following the completion of one year's service at sea. An honorable discharge may be granted under this provision; but when so granted shall not entitle the holder, in case of reenlistment, to the benefits of an honorable discharge granted upon completion of an enlistment: *And provided further*, That, at the time, he is not under charges, or undergoing punishment, or in debt to the Government."

"*Provided*, That the provisions of this section shall not apply to enlistments under the operation of the Act hereby repealed."

Following this paragraph there also appeared in this Act a paragraph as follows: "That the President is authorized in his discretion to utilize the services of postmasters of the second, third, and fourth classes in procuring the enlistment of recruits for the Navy and the Marine Corps, and for each recruit accepted for enlistment in the Navy or the Marine Corps, the postmaster procuring his enlistment shall receive the sum of \$5." [39 Stat. L. 560.]

This was repealed by the Postal Service Appropriation Act of July 2, 1918, ch. —, § 1, — Stat. L. —. See WAR DEPARTMENT AND MILITARY ESTABLISHMENT.

[Motor-propelled vehicles — exchange.] * * * That hereafter worn-out motor-propelled vehicles for the Naval Establishment may be exchanged as a part of the purchase price of new ones. [39 Stat. L. 565.]

[Funeral expenses, etc., of officers and enlisted men — six months' gratuity pay.] * * * That no deduction shall hereafter be made from the six months' gratuity pay allowed under the naval act of August twenty-second, nineteen hundred and twelve, on account of expenses for funeral, interment, or for expenses of preparation and transportation of the remains. [39 Stat. L. 572.]

For the provisions of the Act of Aug. 22, 1912, ch. 335, mentioned in the text, see 1914 Supp. Fed. Stat. Ann. 290. Said Act amended the Act of May 13, 1908, ch. 166, see 6 Fed. Stat. Ann. (2d ed.) 1210.

[Hospital corps — authorized strength — grades and ratings — transfers — pharmacists — duties of corps — when subject to rules and articles of war of army — Act repealed.] Hereafter the authorized strength of the Hospital Corps of the Navy shall equal three and one-half per centum of the authorized enlisted strength of the Navy and Marine Corps, and shall be in addition thereto, and as soon as the necessary transfers or appointments may be effected the Hospital Corps of the United States Navy shall consist of the following grades and ratings: Chief pharmacists, pharmacists, and enlisted men classified as chief pharmacists' mates; pharmacists' mates, first class; pharmacists' mates, second class; pharmacists'

mates, third class; hospital apprentices, first class; and hospital apprentices, second class; such classifications in enlisted ratings to correspond respectively to the enlisted ratings, seamen branch, of chief petty officers; petty officers, first class; petty officers, second class; petty officers, third class; seamen, first class; and seamen, second class: *Provided*, That enlisted men of other ratings in the Navy and in the Marine Corps shall be eligible for transfer to the Hospital Corps, and men of that corps to other ratings in the Navy and the Marine Corps.

The President may hereafter, from time to time, appoint as many pharmacists as may be deemed necessary, from the rating of chief pharmacist's mate, subject to such moral, physical, and professional examinations and requirements as to length of service as the Secretary of the Navy may prescribe: *Provided*, That the pharmacists now in the Hospital Corps of the United States Navy or hereafter appointed therein in accordance with the provisions of this Act shall have the same rank, pay, and allowances as are now or may hereafter be allowed other warrant officers.

Pharmacists shall, after six years from the date of warrant, be commissioned chief pharmacists after passing satisfactorily such examinations as the Secretary of the Navy may prescribe, and shall, when so commissioned, have the same rank, pay, and allowances as now or may hereafter be allowed other commissioned warrant officers: *Provided*, That the pharmacists at present in the service who have served or may thereafter serve six or more years in that grade shall be eligible for promotion to the grade of chief pharmacist upon satisfactorily passing the examinations provided for in this Act.

The Secretary of the Navy is hereby empowered to limit and fix the numbers in the various ratings.

Section three of an Act entitled "An Act to organize a Hospital Corps of the Navy of the United States; to define its duties and regulate its pay," approved June seventeenth, eighteen hundred and ninety-eight, be, and the same is hereby, repealed, and the pay, allowances, and emoluments of the enlisted men of the Hospital Corps shall be the same as are now, or may hereafter be, allowed for respective corresponding ratings, except the rating of turret captain of the first class in the seaman branch of the Navy: *Provided*, That the pay of the rating of the chief pharmacist's mate shall be the same as that now allowed for the existing rating of hospital steward.

Hospital and ambulance service with such commands and at such places as may be prescribed by the Secretary of the Navy, shall be performed by members of said corps, and the corps shall be a constituent part of the Medical Department of the Navy; and the enlisted men thereof shall be a part of the enlisted force provided by law for the Navy.

Officers and enlisted men of the Medical Department of the Navy, serving with a body of marines detached for service with the Army in accordance with the provisions of section sixteen hundred and twenty-one of the Revised Statutes, shall, while so serving, be subject to the rules and articles of war prescribed for the government of the Army in the same manner as the officers and men of the Marine Corps while so serving. [39 Stat. L. 572.]

For the Act of June 17, 1898, ch. 463, § 3, repealed by the text, see 5 Fed. Stat. Ann. 256; 6 Fed. Stat. Ann. (2d ed.) 1091 note.

For R. S. sec. 1621, mentioned in the text, see 5 Fed. Stat. Ann. 350; 6 Fed. Stat. Ann. (2d ed.) 1221.

[Naval Dental Corps — dental surgeons — appointment — rank — qualifications — pay and allowances.] That the President of the United States is hereby authorized to appoint and commission, by and with the advice and consent of the Senate, dental officers in the Navy at the rate of one for each thousand of the total authorized number of officers and enlisted men of the Navy and Marine Corps, in the grade of assistant dental surgeon, passed assistant dental surgeon and dental surgeon, who shall constitute the Naval Dental Corps, and shall be a part of the Medical Department of the Navy. Original appointments to the Naval Dental Corps shall be made in the grade of assistant dental surgeon with the rank of lieutenant (junior grade), and all dental officers now in the Dental Corps appointed under the provisions of the Act of Congress approved August twenty-second, nineteen hundred and twelve (Statutes at Large, volume thirty-seven, page three hundred and forty-five), or under the provisions of the Act of Congress approved August twenty-ninth, nineteen hundred and sixteen (Statutes at Large, volume thirty-nine, page five hundred and seventy-three), or who may hereafter be appointed, shall take rank and precedence with officers of the Naval Medical Corps of the same rank according to the dates of their respective commissions or original appointments, and all such dental officers shall be eligible for advancement in grade and rank in the same manner and under the same conditions as officers of the Naval Medical Corps with or next after whom they take precedence, and shall receive the same pay and allowances as officers of corresponding rank and length of service in the Naval Medical Corps up to and including the rank of lieutenant commander: *Provided*, That dental surgeons shall be eligible for advancement in pay and allowances, but not in rank, to and including the pay and allowances of commander and captain, subject to such examinations as the Secretary of the Navy may prescribe, except that the number of dental surgeons with the pay and allowances of captain shall not exceed four and one-half per centum and the number of dental surgeons with the pay and allowances of commander shall not exceed eight per centum of the total authorized number of dental officers: *Provided further*, That dental surgeons shall be eligible for advancement to the pay and allowances of commander and captain when their total active service as dental officers in the Navy is such that if rendered as officers of the Naval Medical Corps, it would place them in the list of medical officers with the pay and allowances of commander or captain, as the case may be: *And provided further*, That dental officers who shall have gained or lost numbers on the Navy list shall be considered to have gained or lost service accordingly; and the time served by dental officers on active duty as acting assistant dental surgeons and assistant dental surgeons under provisions of law existing prior to the passage of this Act shall be reckoned in computing the increased service pay and service for precedence and promotion of dental officers herein authorized or heretofore appointed.

All appointments authorized by this Act shall be citizens of the United States between twenty-one and thirty-two years of age, and shall be graduates of standard medical or dental colleges and trained in the several branches of dentistry, and shall, before appointment, have successfully

passed mental, moral, physical, and professional examinations before medical and professional examining boards appointed by the Secretary of the Navy, and have been recommended for appointment by such boards: *Provided*, That hereafter no person shall be appointed as assistant dental surgeon in the Navy who is not a graduate of a standard medical or dental college.

Officers of the Naval Dental Corps shall become eligible for retirement in the same manner and under the same conditions as now prescribed by law for officers of the Naval Medical Corps, except that section fourteen hundred and forty-five of the Revised Statutes of the United States shall not be applicable to dental officers, and they shall not be entitled to rank above lieutenant commander on the retired list, or to retired pay above that of captain.

All dental officers now serving under probationary appointments shall become immediately eligible for permanent appointment under the provisions of this Act, subject to the examinations prescribed by the Secretary of the Navy for original appointment as dental officers, and may be appointed assistant dental surgeon with the rank of lieutenant (junior grade) to rank from the date of their probationary appointments: *Provided*, That the senior dental officer now at the United States Naval Academy shall not be displaced by the provisions of this Act, and he shall hereafter have the grade of dental surgeon and the rank, pay, and allowances of lieutenant commander, and he shall not be eligible for retirement before he has reached the age of seventy years, except for physical disability incurred in the line of duty: *Provided further*, That no dental officer in the Navy who on original appointment as dental officer was over forty years of age shall be eligible for retirement before he has reached the age of seventy years, except for physical disability incurred in line of duty.

All Acts or parts of Acts inconsistent with the provisions of this Act relating to the Dental Corps of the Navy are hereby repealed: *Provided*, That nothing herein contained shall be construed to legislate out of the service any officer now in the Medical Department of the Navy or to reduce the rank, pay, or allowances now authorized by law for any officer of the Navy. [39 Stat. L. 573, as amended by — Stat. L. —.]

These provisions were amended to read as here given by the Naval Appropriation Act of July 1, 1918, ch. —. As originally enacted they were as follows:

"That the President of the United States is hereby authorized to appoint and commission, by and with the advice and consent of the Senate, dental surgeons in the Navy at the rate of one for each one thousand of the authorized enlisted strength of the Navy and Marine Corps, who shall constitute the Naval Dental Corps, and shall be a part of the Medical Department of the Navy. Original appointments to the Naval Dental Corps shall be probationary for a period of two years and may be revoked at any time during the probationary period by the President: *Provided*, That the rank of such officers of the same date of appointment among themselves at the end of said probationary period shall be determined by the recommendations of an examining board appointed by the Secretary of the Navy, which board shall conduct a competitive examination, based upon both service record and professional attainments, in accordance with such regulations as may be prescribed by the Secretary of the Navy, and the rank of such officers so determined shall be as of date of original appointment with reference to other appointments to the naval service: *Provided further*, That all appointees to the grade of dental surgeon shall be citizens of the United States between twenty-four and thirty years of age, and shall be graduates of standard medical or dental colleges and trained in the several branches of dentistry, and who shall, before appointment, have successfully passed moral, physical, and professional examinations before medical and professional examining boards appointed

by the Secretary of the Navy, and have been recommended for appointment by such boards.

"Dental surgeons shall have the rank, pay, and allowances of lieutenants (junior grade) until they shall have completed five years' service. Dental surgeons of more than five but less than twenty years' service shall, subject to such examinations as the Secretary of the Navy may prescribe, have the rank, pay, and allowances of lieutenant. Dental surgeons of more than twenty years' service shall, subject to such examinations as the Secretary of the Navy may prescribe, have the rank, pay, and allowances of lieutenant commander: *Provided*, That the total number of dental surgeons with the rank, pay, and allowances of lieutenant commander shall not at any time exceed ten.

"All officers now in the Dental Corps (including the officers appointed for temporary service) appointed under the provisions of the Act of August twenty-second, nineteen hundred and twelve, entitled 'An Act making appropriations for the Naval Service for the fiscal year ending June thirtieth, nineteen hundred and thirteen, and for other purposes,' and all officers now in active service appointed under the provisions of the Act of March fourth, nineteen hundred and thirteen, who were eligible for appointment to the Dental Corps under the provisions of said Act, shall be appointed dental surgeons in the Dental Corps without further examination and without regard to the age qualifications herein prescribed: *Provided*, That the officers so appointed shall not be subject to the provisions herein prescribed for probationary service for a period of two years: *Provided further*, That such officers shall, after appointment as herein prescribed, rank from date of commission and take seniority among themselves in the order of their original appointment by the Secretary of the Navy as shown on the Navy list on the date of approval of this Act: *And provided further*, That no dental surgeon appointed in accordance with the provisions of this Act who on original appointment to the Dental Corps was over forty years of age shall be eligible for retirement before he has reached the age of seventy years, except for physical disability incurred in the line of duty.

"Dental surgeons who shall have lost numbers on the Navy list by sentence of court-martial or by failure upon examination for promotion shall be considered to have lost service accordingly for purposes of advancement in rank with increased pay and allowances."

For the Act of Aug. 22, 1912, ch. 335, mentioned in the text, see 1914 Supp. Fed. Stat. Ann. 294; 6 Fed. Stat. Ann. (2d ed.) 1101.

For R. S. sec. 1445, see 5 Fed. Stat. Ann. 281; 6 Fed. Stat. Ann. (2d ed.) 1118.

[Strength of navy—enlisted men.] * * * pay of petty officers, seamen, landsmen, and apprentice seamen, including men in the engineers force and men detailed for duty with the Fish Commission, sixty-eight thousand seven hundred men, and the President is hereafter authorized, whenever in his judgment a sufficient national emergency exists, to increase the authorized enlisted strength of the Navy to eighty-seven thousand men; * * * hereafter the number of enlisted men of the Navy shall be exclusive of those sentenced by court-martial to discharge; and as many machinists as the President may from time to time deem necessary to appoint; and six thousand apprentice seamen under training at training stations, and on board training ships, at the pay prescribed by law, * * * *Provided*, That the enlisted strength of the Navy authorized in this Act shall be deemed to include all enlistments heretofore made during this calendar year which may have been in excess of the number authorized by law at the time. [39 Stat. L. 575.]

[Ratings of certain enlisted men—change.] * * * That the designation of the rating of coal passer be changed to fireman, third class, and that of ordinary seaman to seaman, second class, without change of pay; and that the Bureau of Navigation be authorized under rules established for the advancement of other enlisted men, to advance printers to the ratings of printer, first class, and chief printer, which ratings are hereby authorized with same pay and increases allowed to yeomen, first class, and chief yeomen, respectively: *And provided further*, That the rating of store-

keeper is hereby established in the artificer branch with the following rates of pay per month: Chief petty officer, \$50; petty officer, first class, \$40; petty officer, second class, \$35; petty officer, third class, \$30, subject to such increases of pay and allowances as are or may hereafter be authorized by law for the enlisted men of the Navy. [39 Stat. L. 575.]

[Commissioned personnel—number of officers—distribution—pay and allowances—promotions—board of naval officers—creation—duties—retirement of officers.] * * * Hereafter the total number of commissioned officers of the active list of the line of the Navy, exclusive of commissioned warrant officers, shall be four per centum of the total authorized enlisted strength of the active list, exclusive of the Hospital Corps, prisoners undergoing sentence of discharge, enlisted men detailed for duty with the Naval Militia, and the Flying Corps: *Provided*, That the total number of commissioned line officers on the active list at any one time, exclusive of commissioned warrant officers, shall be distributed in the proportion of one of the grade of rear admiral to four in the grade of captain, to seven in the grade of commander, to fourteen in the grade of lieutenant commander, to thirty-two and one-half in the grade of lieutenant, to forty-one and one-half in the grades of lieutenant (junior grade) and ensign, inclusive: *Provided further*, That lieutenants (junior grade) shall have had not less than three years' service in that grade before being eligible for promotion to the grade of lieutenant.

The total authorized number of commissioned officers of the active list of the following staff corps, exclusive of commissioned warrant officers, shall be based on percentages of the total number of commissioned officers of the active list of the line of the Navy as follows:

Pay Corps, twelve per centum; Construction Corps, five per centum; Corps of Civil Engineers, two per centum; and that the total authorized number of commissioned officers of the Medical Corps shall be sixty-five one hundredths of one per centum of the total authorized number of the officers and enlisted men of the Navy and Marine Corps, including midshipmen, Hospital Corps, prisoners undergoing sentence of discharge, enlisted men detailed for duty with the Naval Militia, and the Flying Corps. Officers of the lower grades of the Medical Corps, Pay Corps, Construction Corps, and Corps of Civil Engineers shall be advanced in rank up to and including the rank of lieutenant commander with the officers of the line with whom or next after whom they take precedence under existing law: *Provided*, That all assistant surgeons shall from date of their original appointment take rank and precedence with lieutenants (junior grade): *Provided further*, That to determine the authorized number of officers in the various grades and ranks of the line and of the staff corps as herein provided, computations shall be made by the Secretary of the Navy semi-annually, as of July first and January first of each year, and the resulting numbers in the various grades and ranks, as so computed, shall be held and considered for all purposes as the authorized number of officers in such various grades and ranks and shall not be varied between such dates.

The total number of commissioned officers of the active list of the following mentioned staff corps at any one time, exclusive of commissioned

warrant officers, shall be distributed in the various grades of the respective corps as follows:

MEDICAL CORPS: One-half medical directors with the rank of rear admiral to four medical directors with the rank of captain, to eight medical inspectors with rank of commander, to eighty-seven and one-half in the grades below medical inspector: *Provided*, That hereafter appointees to the grade of assistant surgeon shall be between the ages of twenty-one and thirty-two at the time of appointment.

PAY CORPS: One-half pay directors with the rank of rear admiral to four pay directors with the rank of captain, to eight pay inspectors with the rank of commander, to eighty-seven and one-half in the grades below pay inspector.

CONSTRUCTION CORPS: One-half naval constructors with the rank of rear admiral to eight and one-half naval constructors with the rank of captain, to fourteen naval constructors with the rank of commander, to seventy-seven naval constructors and assistant naval constructors with rank below commander: *Provided*, That vacancies in the Construction Corps shall be filled in the manner now prescribed by law, at such annual rate as the Secretary of the Navy may prescribe: *Provided further*, That hereafter ensigns of not less than one year's service as such shall be eligible for transfer to the Construction Corps.

CORPS OF CIVIL ENGINEERS: One-half civil engineers with the rank of rear admiral to five and one-half civil engineers with the rank of captain, to fourteen civil engineers with the rank of commander, to eighty civil engineers and assistant civil engineers with the rank below commander.

Hereafter no further appointments shall be made to the Corps of Professors of Mathematics, and that corps shall cease to exist upon the death, resignation, or dismissal of the officers now carried in that corps on the active and retired lists of the Navy.

When there is an odd number of officers in the grade or rank of rear admiral in the line or in each corps, the lower division thereof shall include the excess in number, except where there is but one.

Whenever a final fraction occurs in computing the authorized number of any corps, grade or rank in the naval service, the nearest whole number shall be regarded as the authorized number: *Provided*, That at least one officer shall be allowed in each grade or rank.

For the purpose of determining the authorized number of officers in any grade or rank of the line or of the staff corps, there shall be excluded from consideration those officers carried by law as additional numbers, including staff officers heretofore permanently commissioned with the rank of rear admiral, and nothing contained herein shall be held to reduce below that heretofore authorized by law the number of officers in any grade or rank in the staff corps.

Hereafter pay and allowances of officers in the upper half of the grade or rank of rear admiral, including the staff corps and including staff officers heretofore permanently commissioned with the rank of rear admiral, shall be that now allowed by law for the first nine rear admirals, and the pay and allowances of officers in the lower half of the grade or rank of rear admiral, including the staff corps, shall be that now allowed by law for the second nine rear admirals: *Provided*, That officers shall take rank in

each staff corps according to the dates of commission in the several grades, excepting in cases where they have gained or lost numbers.

Hereafter chief boatswains, chief gunners, chief machinists, chief carpenters, chief sail makers, chief pharmacists, and chief pay clerks, on the active list with creditable records, shall, after six years from date of commission, receive the pay and allowances that are now or may hereafter be allowed a lieutenant (junior grade), United States Navy: *Provided*, That chief boatswains, chief gunners, chief machinists, chief carpenters, chief sail makers, chief pharmacists, and chief pay clerks, on the active list with creditable records, shall, after twelve years from date of commission, receive the pay and allowances that are now or may hereafter be allowed a lieutenant, United States Navy.

Warrant officers shall receive the same allowances of heat and light as are now or may hereafter be allowed an ensign, United States Navy.

Warrant officers shall be allowed such leave of absence, with full pay, as is now or may hereafter be allowed other officers of the United States Navy.

Hereafter all promotions to the grades of commander, captain, and rear admiral of the line of the Navy, including the promotion of those captains, commanders, and lieutenant commanders who are, or may be, carried on the Navy list as additional to the numbers of such grades, shall be by selection only from the next lower respective grade upon the recommendation of a board of naval officers as herein provided.

The board shall consist of nine rear admirals on the active list of the line of the Navy not restricted by law to the performance of shore duty only, and shall be appointed by the Secretary of the Navy and convened during the month of December of each year and as soon after the first day of the month as practicable.

Each member of said board shall swear, or affirm, that he will, without prejudice or partiality, and having in view solely the special fitness of officers and the efficiency of the naval service, perform the duties imposed upon him as herein provided.

The board shall be furnished by the Secretary of the Navy with the number of vacancies in the grades of rear admiral, captain, and commander to be filled during the following calendar year, including the vacancies existing at the time of the convening of the board and those that will occur by operation of law from the date of convening until the end of the next calendar year, and with the names of all officers who are eligible for consideration for selection as herein authorized, together with the record of each officer: *Provided*, That any officer eligible for consideration for selection shall have the right to forward through official channels at any time not later than ten days after the convening of said board a written communication inviting attention to any matter of record in the Navy Department concerning himself which he deems important in the consideration of his case: *Provided*, That such communication shall not contain any reflection upon the character, or motives of or criticism of any officer: *Provided further*, That no captains, commanders, or lieutenant commanders who shall have had less than four years' service in the grade in which he is serving on November the thirtieth of the year of the convening of the board shall be eligible for consideration by the board: *Provided further*, That the recommendation of the board in the case of officers of the former

Engineer Corps who are restricted by law to the performance of shore duty only and in that of officers who may hereafter be assigned to engineering duty only shall be based upon their comparative fitness for the duties prescribed for them by law. Upon promotion they shall be carried as additional numbers in grade.

The board shall recommend for promotion a number of officers in each grade equal to the number of vacancies to be filled in the next higher grade during the following calendar year: *Provided*, That no officer shall be recommended for promotion unless he shall have received the recommendation of not less than six members of said board.

The report of the board shall be in writing signed by all of the members and shall certify that the board has carefully considered the case of every officer eligible for consideration under the provisions of this law, and that in the opinion of at least six of the members, the officers therein recommended are the best fitted of all those under consideration to assume the duties of the next higher grade, except that the recommendation of the board in the case of officers of the former Engineer Corps who are restricted by law to the performance of shore duty only, and in that of officers who may hereafter be assigned to engineering duty only, shall be based upon their comparative fitness for the duties prescribed for them by law.

The report of the board shall be submitted to the President for approval or disapproval. In case any officer or officers recommended by the board are not acceptable to the President, the board shall be informed of the name of such officer or officers, and shall recommend a number of officers equal to the number of those found not acceptable to the President and if necessary shall be reconvened for this purpose. When the report of the board shall have been approved by the President, the officers recommended therein shall be deemed eligible for selection, and if promoted shall take rank with one another in accordance with their seniority in the grade from which promoted: *Provided*, That any officers so selected shall prior to promotion be subject in all respects to the examinations prescribed by law for officers promoted by seniority, and in case of failure to pass the required professional examination such officer shall thereafter be ineligible for selection and promotion. And should any such officer fail to pass the required physical examination he shall not be considered, in the event of retirement, entitled to the rank of the next higher grade.

On and after June thirtieth, nineteen hundred and twenty, no captain, commander, or lieutenant commander shall be promoted unless he has had not less than two years' actual sea service on seagoing ships in the grade in which serving or who is more than fifty-six, fifty, or forty-five years of age, respectively: *Provided*, That in exceptional cases where officers are specifically designated during war or national emergency declared by the President by the Secretary of the Navy as performing, or as having performed, such highly important duties on shore that their services can not be or could not have been spared from such assignment without serious prejudice to the successful prosecution of the war, the qualification of sea service in the cases of those officers so specifically designated shall not apply while the United States is at war, or during a national emergency declared by the President, or within two and one-half years subsequent to the ending of such war or national emergency: *Provided*, That the qualification

of sea service shall not apply to officers restricted to the performance of engineering duty only: *Provided further*, That captains, commanders, and lieutenant commanders who become ineligible for promotion on account of age shall be retired on a percentage of pay equal to two and one-half per centum of their shore-duty pay for each year of service: *Provided further*, That the total retired pay shall not exceed seventy-five per centum of the shore-duty pay they were entitled to receive while on the active list.

Except as herein otherwise provided, hereafter the age for retirement of all officers of the Navy shall be sixty-four years instead of sixty-two years as now prescribed by law.

Nothing contained in this Act shall be construed to reduce the rank, pay, or allowances of any officer of the Navy or Marine Corps as now provided by law. [39 Stat. L. 576, as amended by — Stat. L. —.]

The twenty-fourth paragraph of the text was amended by the Naval Appropriation Act of July 1, 1918, ch. —, by the insertion of a new proviso immediately after the clause that "On and after June thirtieth, nineteen hundred and twenty, no captain, commander, or lieutenant commander shall be promoted unless he has had not less than two years' actual sea service on sea-going ships in the grade in which serving, or who is more than fifty-six, fifty, or forty-five years of age, respectively," the proviso reading as given in the text.

As originally enacted, there was contained in the twenty-first paragraph of the text a proviso as follows: "*Provided further*, That the increase in the number of captains herein authorized shall be made at the rate of not more than ten captains in any one year." This was repealed by the Act of May 22, 1917, ch. —, § 14, — Stat. L. —.

[Officers for engineering duty — assignments — number — appointments — eligibility — advancements.] * * * Officers of the line of the Navy not below the grade of lieutenant may, upon application, and with the approval of the Secretary of the Navy, be assigned to engineering duty only, and that when so assigned and until they reach the grade of commander, they shall perform duty as prescribed in section four of the Personnel Act approved March third, eighteen hundred and ninety-nine, and thereafter shore duty only as now prescribed for officers transferred to the line from the former engineer corps, except that commanders may be assigned to duty as fleet and squadron engineers: *Provided*, That when so assigned they shall retain their place with respect to other line officers in the grades they now or may hereafter occupy, and also the right to succession to command on shore in accordance with their seniority, and shall be promoted as vacancies occur subject to physical examination and to such examination in engineering as the Secretary of the Navy may prescribe: *Provided further*, That the number of officers so assigned in any one year shall be in accordance with the requirements of the service as determined by the Secretary of the Navy: *And provided further*, That the Secretary of the Navy is hereby authorized to appoint annually in the line of the Navy for a period of ten years following the passage of this Act, in the order of merit determined by such competitive examination as he may prescribe, thirty acting ensigns for the performance of engineering duties only. Persons so appointed must have received a degree of mechanical or electrical engineer from a college or university of high standing or be graduates of technical schools approved by the Secretary of the Navy, must have been found physically qualified by a board of medical officers of the Navy for the performance of the duties required, and must

at the time of appointment be not less than twenty nor more than twenty-six years of age. Such appointments shall be for a probationary period of three years, and may be revoked at any time by the Secretary of the Navy.

Such acting ensigns shall, upon the completion of the probationary period of three years, of which two years shall have been spent on board cruising vessels and one year pursuing a course of instruction at the Naval Academy prescribed by the Secretary of the Navy, be commissioned in the grade of lieutenant of the junior grade after satisfactorily passing such examination as may be prescribed by the Secretary of the Navy, and having been recommended for promotion by the examining board and found physically qualified by a board of medical officers of the Navy.

Such officers shall thereafter be required to perform engineering duties only, and shall be eligible for advancement to the higher grades in the manner herein provided for line officers assigned to engineering duty only. [39 Stat. L. 580.]

For the Navy Personnel Act of March 3, 1899, ch. 413, § 4, mentioned in the text, see 5 Fed. Stat. Ann. 249; 6 Fed. Stat. Ann. (2d ed.) 1093.

[Officers and enlisted men — absence from duty — intemperate use of drugs or alcohol — pay.] * * * Hereafter no officer or enlisted man in the Navy or Marine Corps in active service who shall be absent from duty on account of injury, sickness or disease resulting from his own intemperate use of drugs or alcoholic liquors, or other misconduct, shall receive pay for the period of such absence, the time so absent and the cause thereof to be ascertained under such procedure and regulations as may be prescribed by the Secretary of the Navy: *Provided*, That an enlistment shall not be regarded as complete until the enlisted man shall have made good any time in excess of one day lost on account of injury, sickness or disease resulting from his own intemperate use of drugs or alcoholic liquors, or other misconduct. [39 Stat. L. 580.]

This section was amended to read as here given by the Naval Appropriation Act of July 1, 1918, ch. —, by inserting after the words "on account of," in the second line, the word "injury," followed by a comma, and by inserting after the words "on account of," in the ninth line, the word "injury," followed by a comma.

[Enlisted men — furlough without pay.] * * * The Secretary of the Navy is hereby authorized to grant furlough without pay to enlisted men for a period covering the unexpired portion of their enlistment: *Provided*, That such furlough be granted under the same conditions and in lieu of discharge by purchase or by special order of the department. Enlisted men so furloughed shall be subject to recall in time of war or national emergency to complete the unexpired portion of their enlistment, and shall be in addition to the authorized number of enlisted men of the Navy. [39 Stat. L. 580.]

[Surgeons — increase — details — Red Cross.] * * * Hereafter the authorized number of surgeons in the United States Navy be, and it is hereby, increased by one; and that hereafter the Secretary of the Navy be, and he is hereby authorized to detail one or more officers of the Medical Corps of the United States Navy for duty with the Military Relief Division of the American National Red Cross. [39 Stat. L. 581.]

[Retired officers — detail on active duty — pay.] * * * No officer who, after having commanded a fleet in active commission, has been retired for age and whom, in the judgment of the Secretary of the Navy, the public interests make it necessary to retain for a time after said retirement and who is performing active duty as chairman of the executive committee of the General Board, shall, for the period so retained, suffer any reduction in the emoluments he was receiving at the time of his retirement: *Provided*, That hereafter any retired officer of the naval service who shall be detailed on active duty shall, while so serving, receive the active duty pay and allowances of the grade, not above that of lieutenant commander in the Navy or of major in the Marine Corps, that he would have attained in due course of promotion if he had remained on the active list for a period beyond the date of his retirement equal to the total amount of time during which he has been detailed on active duty since his retirement: *Provided*, That nothing herein shall be construed to reduce the pay of any retired officer on active duty whose retired pay exceeds the active duty pay and allowances for the grade of lieutenant commander. [39 Stat. L. 581.]

[Officers of active list of Navy — pay and allowances.] * * * Hereafter all commissioned officers of the active list of the Navy shall receive the same pay and allowances according to rank and length of service: *Provided*, That this provision shall not be construed to reduce the pay and allowances of commissioned warrant officers as herein authorized. [39 Stat. L. 581.]

[Accounts of disbursing officers — payments for telephones.] * * * That the accounting officers of the United States Treasury are hereby authorized and directed to allow in the accounts of disbursing officers of the Navy all payments for telephones in Government quarters which have been disallowed under section seven of the Act of August twenty-third, nineteen hundred and twelve (Thirty-seventh Statutes, pages one and four hundred and fourteen), by decision of the Comptroller. [39 Stat. L. 581.]

For the Act of Aug. 23, 1912, ch. 350, § 7, mentioned in the text, see 1914 Supp. Fed. Stat. Ann. 143; 3 Fed. Stat. Ann. (2d ed.) 154.

[Administration of justice — summary and general courts-martial — powers — courts of inquiry.] Hereafter all officers of the Navy and Marine Corps who are authorized to order either general or summary courts-martial may order deck courts upon enlisted men under their command, and shall have the same authority to inflict minor punishments as is conferred by law upon the commander of a naval vessel:

Summary courts-martial may be ordered upon enlisted men in the naval service under his command by the commanding officer of any brigade, regiment, or separate or detached battalion, or other separate or detached command, and, when empowered by the Secretary of the Navy, by the commanding officer or officer in charge of any command not specifically mentioned in the foregoing: *Provided*, That when so empowered by the Secretary of the Navy to order summary courts-martial, the commanding officer of a naval hospital or hospital ship shall be empowered to order such courts and deck courts, and inflict the punishments which the commander of a naval

vessel is authorized by law to inflict, upon all enlisted men of the naval service attached thereto, whether for duty or as patients.

No sentence of a summary court-martial shall be carried into execution until the proceedings and sentence have been approved by the officer ordering the court, or his successor in office, and by his immediate superior in command: *Provided*, That if the officer ordering the court, or his successor in office, be the senior officer present, such sentence may be carried into execution upon his approval thereof.

When empowered by the Secretary of the Navy, general courts-martial may be convened by the commanding officer of a squadron, of a division, of a flotilla, or of a larger naval force afloat, and of a brigade or larger force of the naval service on shore beyond the continental limits of the United States: *Provided*, That in time of war, if then so empowered by the Secretary of the Navy, general courts-martial may be convened by the commandant of any navy yard or naval station, and by the commanding officer of a brigade or larger force of the Navy or Marine Corps on shore not attached to a navy yard or naval station.

Courts of inquiry may be convened by any officer of the naval service authorized by law to convene general courts-martial.

When a force of marines is embarked on a naval vessel, or vessels, as a separate organization, not a part of the authorized complement thereof, the authority and powers of the officers of such separate organization of marines shall be the same as though such organization were serving at a navy yard on shore, but nothing herein shall be construed as impairing the paramount authority of the commanding officer of any naval vessel over the vessel under his command and all persons embarked thereon. [39 Stat. L. 586.]

[Oaths — by whom administered — former Act amended.] * * *

The Act entitled "An Act authorizing certain officers of the Navy and Marine Corps to administer oaths," approved January twenty-fifth, eighteen hundred and ninety-five, as amended by the Act of March third, nineteen hundred and one, be, and the same is hereby, further amended so as to read as follows:

The judges advocate of naval general courts-martial and courts of inquiry, and all commanders in chief of naval squadrons, commandants of navy yards and stations, officers commanding vessels of the Navy, and recruiting officers of the Navy, and the adjutant and inspector, assistants adjutant and inspector, commanding officers, recruiting officers of the Marine Corps, and such other officers of the Regular Navy and Marine Corps, of the Naval Reserve Force, of the Marine Corps Reserve, and of the National Naval Volunteers as may be hereafter designated by the Secretary of the Navy, be, and they are hereby, authorized to administer oaths for the purposes of the administration of naval justice and for other purposes of naval administration. [39 Stat. L. 1171.]

This and the four paragraphs of the text following are from the Naval Appropriation Act of March 4, 1917, ch. 180.

For the Act of Jan. 25, 1895, ch. 45, as amended by the Act of March 3, 1901, ch. 834, and further amended by this paragraph, see 5 Fed. Stat. Ann. 280; 6 Fed. Stat. Ann. (2d ed.) 1166.

[Boards of medical examiners, examining boards and retiring boards — by whom ordered.] * * * That hereafter the Secretary of the Navy may authorize the senior officer present, or other commanding officer, on a foreign station to order boards of medical examiners, examining boards, and retiring boards for the examination of such candidates for appointment, promotion, and retirement in the Navy and Marine Corps as may be serving in such officer's command and may be directed to appear before any such board. [39 Stat. L. 1171.]

See the note to the preceding paragraph of the text.

[Naval home — proceeds from sale of material and rentals — disposition.] * * * That all moneys derived from the sale of material at the Naval Home, which was originally purchased from moneys appropriated from the income from the naval pension fund, and all moneys derived from the rental of Naval Home property, shall hereafter be turned into the naval pension fund. [39 Stat. L. 1175.]

See the note to the first paragraph of this Act, *supra*, p. 521.

[Examination of officers for promotion — advancement of staff officers — dental surgeons.] Hereafter all laws relating to the examination of officers of the Navy for promotion shall be construed to apply to the regular advancement of staff officers to higher ranks on the active list, the same as though such advancements in rank were promotions to higher grades: *Provided*, That nothing in this paragraph shall be construed as in any way affecting the original appointment of officers to the Dental Corps as provided in the Act approved August twenty-ninth, nineteen hundred and sixteen, making appropriations for the naval service for the fiscal year ending June thirtieth, nineteen hundred and seventeen, and for other purposes, and the time served by dental surgeons as acting or acting assistant dental surgeons shall be reckoned in computing the increased service pay and service for promotion of such as are commissioned under said Act. [39 Stat. L. 1182.]

See the note to the first paragraph of this Act, *supra*, p. 521.

The provisions of the Act of Aug. 29, 1916, ch. 417, mentioned in the text, are given *supra*, p. 507.

[Certificate of discharge — forging, counterfeiting or altering — penalty.] * * * Whoever shall forge, counterfeit, or falsely alter any certificate of discharge from the military or naval service of the United States, or shall in any manner aid or assist in forging, counterfeiting, or falsely altering any such certificate, or shall use, unlawfully have in his possession, exhibit, or cause to be used or exhibited, any such forged, counterfeited, or falsely altered certificate, knowing the same to be forged, counterfeited, or falsely altered, shall be fined not more than \$1,000 or imprisoned not more than one year, or both, in the discretion of the court. [39 Stat. L. 1182.]

See the note to the first paragraph of this Act, *supra*, p. 521.

An Act To provide for the extension of minority enlistments in the naval service.

[*Act of April 25, 1917, ch. —, — Stat. L. —.*]

[**Minority enlistments — extension.**] That hereafter any enlistment for minority in the Navy or Marine Corps may be extended as is provided by law for extending an enlistment for a term of four years, under similar conditions and with like rights, privileges, benefits, and obligations. [*— Stat. L. —.*]

An Act To authorize the detail of additional officers to the Hydrographic Office.

[*Act of April 25, 1917, ch. —, — Stat. L. —.*]

[**Hydrographic Office — detail of naval officers.**] That the Secretary of the Navy be, and he is hereby, authorized to detail such naval officers as may be necessary to the Hydrographic Office during the continuance of the present war. [*— Stat. L. —.*]

[**SEC. 1.**] [**Navy — enlisted strength — increase.**] That the authorized enlisted strength of the active list of the Navy is hereby temporarily increased from one hundred and thirty-one thousand four hundred and eighty-five to one hundred and eighty-one thousand four hundred and eighty-five; the authorized number of apprentice seamen is hereby temporarily increased from six thousand to twenty-four thousand; and the authorized number of enlisted men of the Flying Corps is hereby temporarily increased from three hundred and fifty to ten thousand: *Provided*. That the phrase 'authorized enlisted strength,' as applied to the personnel of the Navy, shall mean the total number of enlisted men of the Navy authorized by law, exclusive of the Hospital Corps, apprentice seamen, those sentenced by court-martial to discharge, those detailed for duty with Naval Militia, those furloughed without pay, enlisted men of the Flying Corps, and those under instruction in trade schools: *Provided further*, That the number of enlisted men for instruction in trade schools shall not at any time exceed fourteen thousand, which number is hereby temporarily authorized: *Provided further*, That the President is authorized, at any time during the period of the present war, when in his judgment it becomes necessary, temporarily to increase the authorized enlisted strength of the Navy, as provided for herein, by the addition of fifty thousand men. [*— Stat. L. — as amended by — Stat. L. —.*]

This section 1 and the following sections 3-9, 11-13, 15, 17, 18, 20, and 21 are from an Act of May 22, 1917, ch. —, entitled "An Act To temporarily increase the commissioned and warrant and enlisted strength of the Navy and Marine Corps and for other purposes."

This section was amended to read as here given by the Naval Appropriation Act of July 1, 1918, ch. —. As originally enacted it was as follows:

"[**SEC. 1.**] That the authorized enlisted strength of the active list of the Navy is hereby temporarily increased from eighty-seven thousand to one hundred and fifty thousand, including four thousand additional apprentice seamen."

SEC. 3. [Period of enlistments.] That enlistments in the Navy and Marine Corps, during such time as the United States may be at war, shall be for four years or for such shorter period or periods as the President may prescribe, or for the period of the present war. [— *Stat. L.* —.]

See the note to the preceding section 1 of this Act.

SEC. 4. [Additional commissioned officers.] Additional commissioned officers in the Navy and Marine Corps, based upon the temporary increases herein authorized in the number of enlisted men, shall be temporarily appointed by the President, in his discretion, with the advice and consent of the Senate, not above the grades and ranks of lieutenant commander in the line and staff of the Navy and major in the Marine Corps, the distribution in said grades and ranks to be made in accordance with the provisions of the Act of August twenty-ninth, nineteen hundred and sixteen; *Provided*, That all temporary original appointments shall be made in the lowest commissioned grades of the line and staff of the Navy and Marine Corps, exclusive of commissioned warrant officers, and that there shall be no permanent or temporary appointments in or permanent or temporary promotions to any grade or rank above that of lieutenant commander in the Navy or major in the Marine Corps by reason of the temporary appointment of officers authorized by this Act in excess of the total number of officers authorized by existing law or on account of the increase of enlisted men herein authorized: *Provided further*, That, during the period of the present war, the deficiency existing prior to the passage of this Act in the total number of commissioned officers of the Navy and Marine Corps authorized by the Act of August twenty-ninth, nineteen hundred and sixteen, may also be supplied by temporary appointments in the lowest grades and by temporary promotions to all other grades until a sufficient number of officers shall be available for regular appointment or promotion in accordance with existing law: *Provided further*, That nothing herein shall be held or construed to limit or abridge the use or service of the officers of the Navy and Marine Corps on the retired list or of the officers of the Naval Militia and National Naval Volunteers, Naval Reserve Force, and Marine Corps Reserve, as provided and authorized under existing law: *Provided further*, That temporary chaplains and temporary acting chaplains in the Navy may be appointed for service during the period of the war in the proportion of the personnel of the Navy as now prescribed by existing law: *Provided further*, That, based on the temporary increase of enlisted men of the Marine Corps herein authorized, the President, by and with the advice and consent of the Senate, is authorized, in his discretion, temporarily to appoint not exceeding six brigadier generals, twenty-two colonels, and twenty-two lieutenant colonels in the Marine Corps in addition to the number permanently allowed by law in those grades; said temporary appointments shall continue in force only until otherwise directed by the President or until Congress shall amend or repeal the same and not later than six months after the termination of the present war. [— *Stat. L.* — as amended by — *Stat. L.* —.]

See the note to section 1 of this Act, *supra*, p. 523.

The provisions of the Act of Aug. 29, 1916, ch. 417, mentioned in the text, are given *supra*, p. 507.

This section was amended to read as here given by the Naval Appropriation Act of July 1, 1918, ch. —. As originally enacted it was as follows:

"SEC. 4. Additional commissioned officers in the Navy and Marine Corps, based upon the temporary increases herein authorized in the number of enlisted men, shall be temporarily appointed by the President, in his discretion, with the advice and consent of the Senate, not above the grades and ranks of lieutenant in the line and staff of the Navy and major in the Marine corps, the distribution in said grades and ranks to be made in accordance with the provisions of the Act of August twenty-ninth, nineteen hundred and sixteen: *Provided*, That all temporary original appointments shall be made in the lowest commissioned grades of the line and staff of the Navy and Marine Corps, exclusive of commissioned warrant officers, and that there shall be no permanent or temporary appointments in or permanent or temporary promotions to any grade or rank above that of lieutenant in the Navy or major in the Marine Corps by reason of the temporary appointment of officers authorized by this Act in excess of the total number of officers authorized by existing law or on account of the increase of enlisted men herein authorized: *Provided further*, That, during the period of the present war, the deficiency existing prior to the passage of this Act in the total number of commissioned officers of the Navy and Marine Corps authorized by the Act of August twenty-ninth, nineteen hundred and sixteen, may also be supplied by temporary appointments in the lowest grades and by temporary promotions to all other grades until a sufficient number of officers shall be available for regular appointment or promotion in accordance with existing law: *Provided further*, That nothing herein shall be held or construed to limit or abridge the use or service of the officers of the Navy and Marine Corps on the retired list or of the officers of the Naval Militia and National Naval Volunteers, Naval Reserve Force and Marine Corps Reserve, as provided and authorized under existing law: *Provided further*, That temporary chaplains and temporary acting chaplains in the Navy may be appointed for service during the period of the war in the proportion of the personnel of the Navy as now prescribed by existing law."

SEC. 5. [Additional temporary officers.] That the additional temporary officers authorized in the various grades and ranks of the Navy and Marine Corps in accordance with the next preceding section may be temporarily appointed to serve in the grades or ranks to which appointed or promoted by the temporary advancement of officers holding permanent and probationary commissions, by temporary appointment of commissioned warrant officers, warrant officers, and enlisted men of the Navy, and warrant officers, noncommissioned officers, and clerks to assistant paymasters of the Marine Corps, commissioned and warrant officers of the United States Coast Guard, citizens of the United States who have had previous naval or military service or training, and other citizens of the United States specially qualified: *Provided*, That such chief warrant officers as are given the temporary appointments provided herein who were chief warrant officers in the permanent Navy on July first, nineteen hundred and seventeen, and were not given such temporary appointments as of that date because of age restriction or ill health, shall take rank and precedence with the other chief warrant officers temporarily appointed as of July first, nineteen hundred and seventeen, and according to their seniority as chief warrant officers in the permanent service: *Provided further*, That in making appointments authorized herein the maximum age limit shall be fifty years for enlisted men to ensign, enlisted men of the Navy to warrant rank, noncommissioned officers of the Marine Corps to commissioned rank, members of the Marine Corps branch of the Naval Militia and National Naval Volunteers, Marine Corps Reserve, and civilians specially qualified to commissioned rank, and temporary chaplains and temporary acting chaplains: *Provided further*, That graduates of the Naval Academy and warrant officers duly commissioned in the Navy or Marine Corps in accordance with existing law shall not, by virtue of this Act, be required to receive temporary appointments;

and the class of midshipmen graduated from the Naval Academy on March twenty-ninth, nineteen hundred and seventeen, and the classes to be graduated hereafter, may be commissioned effective from date of graduation: *Provided further*, That temporary appointments as warrant officers of the Navy may be made by the Secretary of the Navy: *Provided further*, That temporary appointments as chief warrant officers may be made by the President with the consent of the Senate: *Provided further*, That the temporary appointment for the war of seventy-six additional marine gunners, and seventy-six additional quartermaster clerks, is authorized: *Provided further*, That lieutenants (junior grade) and ensigns may be considered eligible for temporary promotions to the grades of lieutenant and lieutenant (junior grade), respectively, without regard to length of service in grade. [— *Stat. L. — as amended by — Stat. L. —.*]

See the note to section 1 of this Act, *supra*, p. 523.

This section was amended to read as here given by the Naval Appropriation Act of July 1, 1918, ch. —. As originally enacted it was as follows:

"SEC. 5. That the additional temporary officers authorized in the various grades and ranks of the Navy and Marine Corps in accordance with the next preceding section may be temporarily appointed to serve in the grades or ranks to which appointed or promoted by temporary advancement of officers holding permanent and probationary commissions, by temporary appointment of commissioned warrant officers, warrant officers, and enlisted men of the Navy, and warrant officers, noncommissioned officers, and clerks to assistant paymasters of the Marine Corps, commissioned and warrant officers of the United States Coast Guard, citizens of the United States who have had previous naval or military service or training, and other citizens of the United States specially qualified: *Provided*, That in making appointments authorized herein the maximum age limit shall be fifty years for commissioned warrant officers, warrant officers, and enlisted men to ensign, enlisted men of the Navy to warrant rank, candidates for assistant surgeon, noncommissioned officers of the Marine Corps to commissioned rank, members of the Marine Corps branch of the Naval Militia and National Naval Volunteers, Marine Corps Reserve, and civilians specially qualified to commissioned rank, and warrant officers of the active list of the Marine Corps appointed to commissioned rank, and temporary chaplains and temporary acting chaplains: *Provided further*, That graduates of the Naval Academy and warrant officers duly commissioned in the Navy or Marine Corps in accordance with existing law shall not, by virtue of this Act, be required to receive temporary appointments; and the class of midshipmen graduated from the Naval Academy on March twenty-ninth, nineteen hundred and seventeen, and the classes to be graduated hereafter, may be commissioned effective from date of graduation: *Provided further*, That temporary appointments as warrant officers of the Navy may be made by the Secretary of the Navy: *Provided further*, That lieutenants (junior grade) and ensigns may be considered eligible for temporary promotions to the grades of lieutenant and lieutenant (junior grade), respectively, without regard to length of service in grade."

SEC. 6. [Computations — promotions.] That during the period of the present war the computations to be made by the Secretary of the Navy as prescribed by the Act of August twenty-ninth, nineteen hundred and sixteen, shall be made semiannually as of July first and January first of each year and at such other times as he may deem necessary; and the Board of Rear Admirals for selection for promotion prescribed in said Act may be convened at such times as the exigencies of the service may require and shall recommend for promotion such number of officers as the Secretary of the Navy may prescribe to fill vacancies in the several grades as provided by existing law. [— *Stat. L. —.*]

See the note to section 1 of this Act, *supra*, p. 523.

The provisions of the Act of Aug. 29, 1916, ch. 417, mentioned in the text, are given *supra*, p. 507.

SEC. 7. [Vacation of commissions — temporary appointments — pay — grades.] That the permanent and probationary commissions, appointments, and warrants of officers shall not be vacated by reason of their temporary advancement or appointment, nor shall said officers be prejudiced in their relative lineal rank in regard to promotion in accordance with the Act of August twenty-ninth, nineteen hundred and sixteen: *Provided*, That the rights, benefits, privileges, and gratuities of all enlisted men of the Navy and Marine Corps now authorized by law shall not be lost or abridged in any respect whatever by their acceptance of temporary commissions or warrants hereunder: *Provided further*, That no person who shall receive a temporary appointment shall be entitled to pay or allowances except under such temporary appointment: *And provided further*, That upon the termination of temporary appointments in a higher grade or rank as authorized by this Act the officers so advanced, including probationary second lieutenants, warrant officers, clerks to assistant paymasters, and enlisted men of the Navy and Marine Corps, commissioned and warrant officers of the United States Coast Guard, shall revert to the grade, rank, or rating from which temporarily advanced, unless such officers or enlisted men in the meantime, in accordance with law, become entitled to promotion to a higher grade or rank in the permanent Navy or Marine Corps, in which case they shall revert to said higher grade or rank and shall, after passing the prescribed examinations, be commissioned accordingly. [— *Stat. L. —*.]

See the note to section 1 of this Act, *supra*, p. 523.

The provisions of the Act of Aug. 29, 1916, ch. 417, mentioned in the text, are given *supra*, p. 507.

SEC. 8. [Temporary appointments and advancements — duration.] That all temporary appointments or advancements authorized by this Act shall continue in force only until otherwise directed by the President or until Congress shall amend or repeal the authorization for the increases herein provided and not later than six months after the termination of the present war. [— *Stat. L. —*.]

See the note to section 1 of this Act, *supra*, p. 523.

SEC. 9. [Temporary appointments and advancements — retired list.] That any officer of the permanent Navy or Marine Corps, temporarily advanced in grade or rank in accordance with the provisions of this Act, who shall be retired from active service under his permanent commission while holding such temporary rank, except for physical disability incurred in line of duty, shall be placed on the retired list with the grade or rank to which his position in the permanent Navy or Marine Corps at the date of his retirement would entitle him, and any person originally appointed temporarily, as provided in this Act, shall not be entitled to any rights of retirement, except for physical disability incurred in line of duty. [— *Stat. L. —*.]

See the note to section 1 of this Act, *supra*, p. 523.

SEC. 11. [Increase in number of gunners and clerks.] That the appointment of thirty marine gunners, thirty quartermaster's clerks, and nine

clerks to assistant paymasters, additional to the number now prescribed by law, and the temporary appointment of eight clerks to assistant paymasters for the war, is hereby authorized, such appointments to be made in the manner now provided by law. [— *Stat. L.* —.]

See the note to section 1 of this Act, *supra*, p. 523.

SEC. 12. [Temporary appointments and promotions — how made.] That the temporary appointments and promotions herein authorized shall be made by the President, with the advice and consent of the Senate. [— *Stat. L.* —.]

See the note to section 1 of this Act, *supra*, p. 523.

SEC. 13. [Reduction of rank, pay or allowances.] Nothing contained in this Act shall operate to reduce the rank, pay, or allowances that would have been received by any person in the Navy, Marine Corps, or Coast Guard except for the passage of this Act. [— *Stat. L.* —.]

See the note to section 1 of this Act, *supra*, p. 523.

SEC. 15. [Enlisted men — increases of pay.] That commencing June first, nineteen hundred and seventeen, and continuing until not later than six months after the termination of the present war, all enlisted men of the Navy of the United States in active service whose base pay does not exceed \$21 per month shall receive an increase of \$15 per month; those whose base pay is over \$21 and does not exceed \$24 per month, an increase of \$12 per month; those whose base pay is over \$24 and less than \$45 per month, an increase of \$8 per month; and those whose base pay is \$45 or more per month, an increase of \$6 per month: *Provided*, That the increases of pay herein authorized shall not enter into the computation of continuous-service pay. [— *Stat. L.* —.]

See the note to section 1 of this Act, *supra*, p. 523.

SEC. 17. [Medical Corps — officers — precedence promotions.] That nothing contained in the Act of August twenty-ninth, nineteen hundred and sixteen, shall operate to disturb the relative position of officers in the Medical Corps with reference to precedence or promotion, but all such officers otherwise qualified shall be advanced in rank with or ahead of officers in said corps who were their juniors on the date of said Act. [— *Stat. L.* —.]

See the note to section 1 of this Act, *supra*, p. 523.

The provisions of the Act of Aug. 29, 1916, ch. 417, mentioned in the text, are given *supra*, p. 507.

SEC. 18. [Admirals — Vice Admirals — former Act repealed.] That the President be, and he is hereby, further authorized to designate six officers of the Navy for the command of fleets or subdivisions thereof and, after being so designated from the date of assuming such command until relinquishing thereof, not more than three of such officers shall each have the rank and pay of an admiral, and the others shall each have the rank and pay of a vice admiral; and the grades of admiral and vice admiral are

hereby authorized and continued for the purpose of this Act: *Provided*, That in time of war the selections under the provisions of this section shall be made from the grades of rear admiral or captain on the active list of the Navy: *Provided further*, That the pay of an admiral shall be \$10,000 and the pay of a vice admiral \$9,000 per annum: *Provided further*, That in time of peace officers for the command of fleets and subdivisions thereof, as herein authorized, shall be designated from among the rear admirals on the active list of the Navy: *Provided further*, That nothing herein contained shall create any vacancy in any grade in the Navy or increase the total number of officers authorized by law: *Provided further*, That when an officer with the rank of admiral or vice admiral is detached from the command of a fleet or subdivision thereof, as herein authorized, he shall return to his regular rank in the list of officers of the Navy and shall thereafter receive only the pay and allowances of such rank: *And provided further*, That nothing in this Act shall be held or construed as amending or repealing the provisions of sections fourteen hundred and thirty-four, fourteen hundred and sixty-three, and fourteen hundred and sixty-four of the Revised Statutes of the United States.

That the provision in the Act approved March third, nineteen hundred and fifteen, for the designation of commanders in chief of certain fleets with the rank of admiral and for the designation of officers second in command of such fleets with the rank of vice admiral be, and the same is hereby, repealed. [— *Stat. L.* —.]

See the note to section 1 of this Act, *supra*, p. 523.

For R. S. secs. 1437, 1463, 1464, mentioned in this section, see 5 Fed. Stat. Ann. 279, 285; 6 Fed. Stat. Ann. (2d ed.) 1110, 1123.

For the provisions of the Act of March 3, 1915, ch. 83, repealed by the text, see 1916 Supp. Fed. Stat. Ann. 177; 6 Fed. Stat. Ann. (2d ed.) 1106.

SEC. 20. [Examinations.] That hereafter all laws relating to the examination of officers of the Navy for promotion shall be construed to apply to the regular advancement of staff officers to higher ranks on the active list the same as though such advancements in rank were promotions to higher grades: *Provided*, That examinations for such staff officers shall not be required except for such regular advancements in rank: *Provided further*, That the President be, and he is hereby, authorized to direct the Secretary of the Navy to take such action on the records of proceedings of naval examining boards and boards of naval surgeons for the promotion of officers of the Navy as is now required by law to be taken by the President. [— *Stat. L.* —.]

See the note to section 1 of this Act, *supra*, p. 523.

SEC. 21. [Extra allowance of food.] That during the continuance of the present war an extra allowance of one ounce of coffee or cocoa, two ounces of sugar, four ounces of hard bread or its equivalent, and four ounces of preserved meat or its equivalent shall be allowed to enlisted men of the deck force when standing night watches between eight o'clock post-meridian and eight o'clock antemeridian. [— *Stat. L.* —.]

See the note to section 1 of this Act, *supra*, p. 523.

An Act To provide for the payment of six months' gratuity to the widow, children, or other previously designated dependent relative of retired officers or enlisted men on active duty.

[*Act of Oct. 6, 1917, ch. —, — Stat. L. —.*]

[Gratuity pay — widows, etc.— former Act amended.] That the paragraph of the Act approved August twenty-second, nineteen hundred and twelve, entitled "An Act making appropriations for the Naval Service for the fiscal year ending June thirtieth, nineteen hundred and thirteen, and for other purposes," as amended by the Act of March third, nineteen hundred and fifteen, which provides for the payment of six months' gratuity to the widow or children or other previously designated dependent relative of a deceased officer or enlisted man on the active list of the Navy and Marine Corps, be, and the same is hereby, amended by inserting after the words "on the active list of the Navy or Marine Corps" a comma and the words "or of any retired officer or enlisted man serving on active duty during the continuance of the present war." [*— Stat. L. —.*]

For the Act of Aug. 22, 1912, ch. 335, mentioned in the text, see 1914 Supp. Fed. Stat. Ann. 290.

For the amendatory Act of March 3, 1915, ch. 83, mentioned in the text, see 1916 Supp. Fed. Stat. Ann. 174.

Said Act of Aug. 22, 1912, ch. 335, constituted an amendment of a paragraph of the Act of May 13, 1908, ch. 166, given in 6 Fed. Stat. Ann. (2d ed.) 1210. See the note thereto.

An ACT To establish certain new ratings in the United States Navy, and for other purposes.

[*Act of Oct. 6, 1917, ch. —, — Stat. L. —.*]

[New ratings — engineers, mechanics, etc.] That the ratings engineman, first class, engineman, second class; blacksmith, first class, blacksmith, second class; coppersmith, first class, coppersmith, second class; pattern maker, first class, pattern maker, second class; molder, first class, molder, second class; chief special mechanic and special mechanic, first class, be, and they are hereby, established in the artificer branch of the Navy with the following rates of base pay per month: Engineman, first class, \$45; engineman, second class, \$40; blacksmith, first class, \$65; blacksmith, second class, \$50; coppersmith, first class, \$65; coppersmith, second class, \$50; pattern maker, first class, \$65; pattern maker, second class, \$50; molder, first class, \$65; molder, second class, \$50; chief special mechanic, \$127; special mechanic, first class, \$80: *Provided*, That the base pay of machinists' mates, second class, and water tenders be, and it is hereby, increased from \$40 to \$45 per month: *Provided further*, That all the aforesaid rates of pay shall be subject to such increases of pay and allowances as are, or may hereafter be, authorized by law for enlisted men of the Navy: *And provided further*, That appointments or enlistments in the said ratings may be made from enlisted men in the Navy or from civil life, respectively, and the qualifications of candidates for any of said ratings shall be determined in accordance with such regulations as the Secretary of the Navy may prescribe. [*— Stat. L. —.*]

An Act To provide for the service of officers of auxiliary naval forces on naval courts.

[Act of Oct. 6, 1917, ch. —, — Stat. L. —.]

[Naval courts — service of officers of auxiliary naval forces — former Acts repealed.] That when actively serving under the Navy Department in time of war or during the existence of an emergency, pursuant to law, as a part of the naval forces of the United States, commissioned officers of the Naval Reserve Force, Marine Corps Reserve, National Naval Volunteers, Naval Militia, Coast Guard, Lighthouse Service, Coast and Geodetic Survey, and Public Health Service are hereby empowered to serve on naval courts-martial and deck courts under such regulations necessary for the proper administration of justice and in the interests of the services involved, as may be prescribed by the Secretary of the Navy: * * *

Provided further, That so much of the Naval Militia Act of February sixteenth, nineteen hundred and fourteen (Thirty-eighth Statutes, page two hundred and eighty-three), as reads as follows:

“That when in the service of the United States officers of the Naval Militia may serve on courts-martial for the trial of officers and men of the Regular or Naval Militia service, but in the cases of courts-martial convened for the trial of officers of the Regular service, the majority of the members shall be officers of the Regular service; and officers and men of the Naval Militia may be tried by courts-martial the members of which are officers of the Regular or Naval Militia service, or both,” is hereby repealed.

And provided further, That any Act or parts of Acts in conflict with the provisions hereof are hereby repealed. [— Stat. L. —.]

For the Act of Feb. 16, 1914, ch. 21, § 5, in part repealed by the text, see 1916 Supp. Fed. Stat. Ann. 150.

The first proviso of this Act, omitted here, repealed a provision of the Act of Aug. 29, 1916, ch. 417, 39 Stat. L. 597, which was as follows:

“That when serving under the call of the President, officers of said Volunteers may serve on courts-martial for the trial of officers and men of the United States Naval or Naval Militia service, or of said Volunteers, but in the cases of courts-martial convened for the trial of officers or enlisted men of the United States Navy or Marine Corps, the majority of the members shall be officers of the Regular Naval service, and officers and enlisted men of the said Volunteers may be tried by courts-martial, the members of which are members of the Regular Naval service, or of said Volunteers, or any or all of the same.”

An Act To promote the efficiency of the United States Navy.

[Act of Oct. 6, 1917, ch. —, — Stat. L. —.]

[Alcoholic liquors — prohibition of sale — houses of ill fame.] That in construing the provisions of sections twelve and thirteen of the selective-draft Act approved May eighteenth, nineteen hundred and seventeen, the word “Army” shall extend to and include “Navy”; the word “military” shall include “naval”; “Article of War” shall include “Articles for the Government of the Navy”; the words “camps, station, cantonment, camp, fort, post, officers’ or enlisted men’s club,” in section twelve, and “camp, station, fort, post, cantonment, training, or mobilization place,” in section thirteen, shall include such places under naval jurisdiction as the

President may prescribe, and the powers therein conferred upon the Secretary of War with regard to the military service are hereby conferred upon the Secretary of the Navy with regard to the naval service. [*— Stat. L. —.*]

The Selective Draft Act of May 18, 1917, ch. —, §§ 12, 13, mentioned in the text, is given under WAR DEPARTMENT AND MILITARY ESTABLISHMENT.

An Act To amend section fifteen hundred and eighty-five of the Revised Statutes of the United States.

[*Act of Oct. 6, 1917, ch. —, — Stat. L. —.*]

[**Commutation price of ration — R. S. sec. 1585 amended.**] That section fifteen hundred and eighty-five of the Revised Statutes of the United States be, and it is hereby, amended to read as follows:

“SEC. 1585. Forty cents shall in all cases be deemed the commutation price of the Navy ration: *Provided, however,* That after January first, nineteen hundred and eighteen, the commutation price shall not exceed the average cost of the ration during the preceding six months, not to exceed 40 cents.” [*— Stat. L. —.*]

For R. S. sec. 1585, amended by this Act, see 5 Fed. Stat. Ann. 337; 6 Fed. Stat. Ann. (2d ed.) 1186.

An Act To provide for the reimbursement of officers, enlisted men, and others in the naval service of the United States for property lost or destroyed in such service.

[*Act of Oct. 6, 1917, ch. —, — Stat. L. —.*]

[**Reimbursement of officers and men for property damaged, lost, etc.— nature of reimbursement — claims — time limit — method of submitting — application to Coast Guard — Acts repealed.**] That the paymaster General of the Navy be, and he is hereby, authorized and directed to reimburse such officers, enlisted men, and others in the naval service of the United States as may have suffered, or may hereafter suffer, loss or destruction of or damage to their personal property and effects in the naval service due to the operations of war or by shipwreck or other marine disaster when such loss, destruction, or damage was without fault or negligence on the part of the claimant, or where the private property so lost, destroyed, or damaged was shipped on board an unseaworthy vessel by order of an officer authorized to give such order or direct such shipment, or where it appears that the loss, destruction, or damage of or to the private property of the claimant was in consequence of his having given his attention to the saving of the lives of others or of property belonging to the United States which was in danger at the same time and under similar circumstances. And the liability of the Government under this Act shall be limited to such articles of personal property as the Chief of the Bureau of Navigation of the Navy Department with reference to the personnel of the Navy, or the major general commandant of the Marine Corps, with reference to the personnel of that corps, in his discretion, shall decide to be reasonable, useful, and

proper for such officer, enlisted man, or other person while engaged in the public service in line of duty, and the certificate of said chief of bureau or major general commandant, as the case may be, shall be sufficient voucher for and shall be final as to all matters necessary to the establishment and payment or settlement of any claim filed hereunder; and the action of the said chief of bureau or major general commandant, as the case may be, upon all claims arising under this Act shall be final, and no right to prosecute a claim or action in the Court of Claims or in any other court of the United States, or before any accounting officer of the United States, or elsewhere, except as herein provided, shall accrue to any person by virtue of this Act: *Provided*, That the liability of the Government under this Act shall be limited to such articles of personal property as are required by the United States Naval Regulations and in force at the time of loss or destruction for such officers, petty officers, seamen, or others engaged in the public service in the line of duty: *Provided further*, That with reference to claims of persons in the Marine Corps filed under the terms of this Act the paymaster of the Marine Corps shall make the reimbursement in money, and the quartermaster of the Marine Corps shall make the reimbursement in kind herein provided for: *And provided further*, That all claims now existing under this Act shall be presented within two years from the passage hereof and not thereafter; and all such claims hereafter arising shall be presented within two years from the occurrence of the loss, destruction, or damage: *And provided further*, That the term "in the naval service," as herein employed, shall be held to include service performed on board any vessel, whether of the Navy or not, provided the claimant is serving on such vessel pursuant to the orders of duly constituted naval authority: *And provided further*, That all claimants under this Act shall be required to submit their claims in writing and under oath to the said Chief of the Bureau of Navigation or major general commandant, as the case may be: *And provided further*, That claims arising in the manner indicated in this Act and which have been settled under the terms of previously existing law shall be regarded as finally determined and no other or further right of recovery under the provisions hereof shall accrue to persons who have submitted such claims as aforesaid: *And provided further*, That sections two hundred and eighty-eight, two hundred and eighty-nine, and two hundred and ninety, Revised Statutes, and the Act of March second, eighteen hundred and ninety-five (Twenty-eighth Statutes, page nine hundred and sixty-two), are hereby repealed: *And provided further*, That reimbursement for loss, destruction, or damage sustained and determined as herein provided shall be made in kind for such articles as are customarily issued to the service and shall be made in money for other articles at the valuation thereof at the time of their loss, destruction, or damage: *And provided further*, That in cases involving persons in the Navy reimbursement in money shall be made from the appropriation "Pay of the Navy," and reimbursement in kind shall be made from the appropriation "Outfits on first enlistment," and in cases involving persons in the Marine Corps reimbursement in money shall be made from the appropriation "Pay, Marine Corps," and reimbursement in kind shall be made from the appropriation "Clothing, Marine Corps," respectively, current at the time the claim covering such loss, damage, or destruction is paid: *And provided further*, That the provisions of this Act shall apply to the personnel of the Coast Guard in like manner as to the per-

sonnel of the Navy, whether the Coast Guard is operating under the Treasury Department or operating as a part of the Navy, and all of the duties, which, under this Act, devolve upon the major-general commandant of the Marine Corps with reference to the personnel of that corps, shall devolve upon the captain commandant of the Coast Guard, and in cases involving persons in the Coast Guard reimbursement in money shall be made by a disbursing officer of the Coast Guard from the appropriation "Coast Guard" and reimbursement in kind shall be made by the captain commandant from the appropriation "Coast Guard." [— *Stat. L.* —.]

For R. S. secs. 288, 289, 290, and the Act of March 2, 1895, ch. 190, repealed by this Act, see 5 Fed. Stat. Ann. 309; 6 Fed. Stat. Ann. (2d ed.) 1163, 1164, 1165.

[SEC. 1.] **[Facilities for construction of additional torpedo boat destroyers — acquisition.]** * * * For acquiring and providing facilities for the expeditious construction of additional torpedo-boat destroyers, and for each and every purpose connected therewith, and toward their construction, to cost in all not more than \$350,000,000, \$225,000,000, or so much thereof as may be necessary, to be expended at the direction and in the discretion of the President.

The President is hereby authorized and empowered, within the amount hereinbefore authorized, to acquire or provide facilities additional to those now in existence for the construction of torpedo-boat destroyers, their hulls, machinery, and appurtenances, including the immediate taking over for the United States of the possession of and title to land, its appurtenances and improvements, which he may find necessary in this connection.

That if said lands and appurtenances and improvements shall be taken over as aforesaid, the United States shall make just compensation therefor, to be determined by the President, and if the amount thereof, so determined by the President, is unsatisfactory to the person entitled to receive the same, such person shall be paid seventy-five per centum of the amount so determined by the President and shall be entitled to sue the United States to recover such further sum as added to said seventy-five per centum will make up such amount as will be just compensation therefor, in the manner provided for by section twenty-four, paragraph twenty, section one hundred and forty-five of the Judicial Code.

Upon the taking over of said property by the President as aforesaid the title to all property so taken over shall immediately vest in the United States. [— *Stat. L.* —.]

This is from the Deficiencies Appropriation Act of Oct. 6, 1917, ch. —.
For Judicial Code, § 24, par. 20, see 1912 Supp. Fed. Stat. Ann. 140; 4 Fed. Stat. Ann. (2d ed.) 1059.

An Act To authorize and empower officers and enlisted men of the Navy and Marine Corps to serve under the Government of the Dominican Republic, and for other purposes.

[*Act of Feb. 11, 1918, ch. —, — Stat. L. —.*]

[Navy and Marine Corps — officers and enlisted men — detail to assist Dominican Republic.] That the President of the United States be, and

he is hereby, authorized, in his discretion, to detail to assist the Dominican Republic, officers and enlisted men of the United States Navy and the United States Marine Corps: *Provided*, That officers and enlisted men so detailed be, and they are hereby, authorized to accept from the Government of the Dominican Republic offices under said Government with compensation and emoluments from the said Dominican Republic, subject to the approval of the President of the United States: *Provided further*, That while so detailed such officers and enlisted men shall receive, in addition to the compensation and emoluments allowed them by the Dominican Republic, the pay and allowances of their rank or rating in the United States Navy or United States Marine Corps, as the case may be, and they shall be entitled to the same credit, while so serving, for longevity, retirement, foreign-service pay, and for all other purposes that they would receive if they were serving with the United States Navy or Marine Corps in said Dominican Republic. [— *Stat. L.* —.]

An Act To amend section fifteen hundred and seventy of the Revised Statutes of the United States.

[*Act of March 29, 1918, ch. —, — Stat. L. —.*]

[**Seaman, landsman or marine — additional pay for serving as fireman — R. S. sec. 1570 amended.**] That section fifteen hundred and seventy of the Revised Statutes of the United States be, and it is hereby, amended to read as follows:

“SEC. 1570. Every seaman, landsman, or marine who performs the duty of a fireman on board any vessel of war shall be entitled to receive, in addition to his compensation as seaman, landsman, or marine, a compensation at the rate of 33 cents a day for the time he is employed as fireman.” [— *Stat. L.* —.]

For R. S. sec. 1570, see 5 Fed. Stat. Ann. 330; 6 Fed. Stat. Ann. (2d ed.) 1179.

An Act To authorize the payment of gun pointers and gun captains while temporarily absent from their regular stations, and for other purposes.

[*Act of March 29, 1918, ch. —, — Stat. L.*]

[**Gun pointers and gun captains — additional pay while temporarily absent.**] That during the period of the present war any enlisted man of the Navy or Marine Corps who has qualified, or who may hereafter qualify, as a gun pointer or gun captain, and who has been, or may hereafter be, detailed as gun pointer or gun captain for a gun of the class for which qualified, shall be entitled to the additional pay now or hereafter provided for such qualification and detail while temporarily absent by proper authority from the place where ordinarily required to perform duty under such detail, or while performing temporary duty which is not connected with such detail as gun pointer or gun captain. [— *Stat. L.* —.]

An Act To provide for the disposition of the effects of deceased persons in the naval service.

[*Act of March 29, 1918, ch. —, — Stat. L. —.*]

[**Deceased persons in naval service — disposition of effects.**] That hereafter all moneys, articles of value, papers, keepsakes, and other similar effects belonging to deceased persons in the naval service, not claimed by their legal heirs or next of kin, shall be deposited in safe custody, and if any such moneys, articles of value, papers, keepsakes, or other similar effects so deposited have been, or shall hereafter be, unclaimed for a period of two years from the date of the death of such person, such articles and effects shall be sold and the proceeds thereof, together with the moneys above mentioned, shall be deposited in the Treasury to the credit of the Navy pension fund: *Provided*, That the Secretary of the Navy is hereby authorized and directed to make diligent inquiry in every instance after the death of such person to ascertain the whereabouts of his heirs or next of kin, and to prescribe such regulations as may be necessary to carry out the foregoing provisions: *Provided further*, That claims may be presented hereunder at any time within five years after such moneys or proceeds have been so deposited in the Treasury, and, when supported by competent proof in any case after such deposit in the Treasury, shall be certified to Congress for consideration. [*— Stat. L. —.*]

An Act To authorize the President to drop from the rolls any naval or Marine Corps officer absent without leave for three months, or who has been convicted of any offense punishable by confinement in the penitentiary by the civil authorities, and prohibiting such officer's reappointment.

[*Act of April 2, 1918, ch. —, — Stat. L. —.*]

[**Naval or marine corps officers — dropping from rolls by President — reappointment.**] That the President is hereby authorized to drop from the rolls of the Navy or Marine Corps any officer thereof who is absent from duty without leave for a period of three months or more, or who, having been found guilty by the civil authorities of any offense, is finally sentenced to confinement in a State or Federal penitentiary: *Provided*, That no officer so dropped shall be eligible for reappointment. [*— Stat. L. —.*]

An Act To regulate the pay of retired chief warrant officers and warrant officers on active duty.

[*Act of April 10, 1918, ch. —, — Stat. L. —.*]

[**SEC. 1.**] [**Retired chief warrant officers — pay — active duty.**] That any retired chief warrant officer who has been on active duty since August twenty-ninth, nineteen hundred and sixteen, or who may hereafter perform active duty, and whose record is creditable, shall, during such time

as he has been or may hereafter be, on active duty, and from the time his service on the active list after date of commission, plus his service on active duty while on the retired list, is equal to six years, receive the pay and allowances that are now, or may hereafter be, allowed a lieutenant (junior grade), United States Navy; and shall, during such time as he has been, or may hereafter be, on active duty, and from the time such total service is equal to twelve years, receive the pay and allowances that are now, or may hereafter be, allowed a lieutenant, United States Navy. [— *Stat. L. —*.]

SEC. 2. [Retired warrant officers — pay — active duty.] That any retired warrant officer who has been on active duty since August twenty-ninth, nineteen hundred and sixteen, or who may hereafter perform active duty, and whose record is creditable, shall, during such time as he has been or may hereafter be on active duty, and from the time his service on the active list after date of warrant, plus his service on active duty while on the retired list, is equal to twelve years, receive the pay and allowances that are now or may hereafter be allowed a lieutenant (junior grade), United States Navy; and shall, during such time as he has been or may hereafter be on active duty, and from the time such total service is equal to eighteen years, receive the pay and allowances that are now or may hereafter be allowed a lieutenant, United States Navy. [— *Stat. L. —*.]

An Act To authorize the Secretary of the Navy to increase the facilities for the proof and test of ordnance material, and for other purposes.

[*Act of April 26, 1918, ch. —, — Stat. L. —*.]

[Proof and test of ordnance material — increased facilities — acquisition by government — procedure.] That the Secretary of the Navy is hereby authorized to expend the sum of \$1,000,000, or any part thereof, in his discretion, for the purpose of increasing the facilities for the proof and test of ordnance material, including necessary buildings, construction, equipment, railroad, and water facilities, land, and damages and losses to persons, firms, and corporations resulting from the procurement of the land for this purpose, and also all necessary expenses incident to the procurement of said land: *Provided*, That if such lands and appurtenances and improvements attached thereto, can not be procured by purchase within one month after the passage of this Act the President is hereby authorized and empowered to take over for the United States the immediate possession and title of such lands and improvements, including all easements, rights of way, riparian, and other rights appurtenant thereto, or any land selected by him to be used for the carrying out of the purposes of this Act. That if said land and appurtenances and improvements shall be taken over as aforesaid, the United States shall make just compensation therefor, to be determined by the President, and if the amount thereof so determined by the President is unsatisfactory to the person entitled to receive the same, such person shall be paid seventy-five per centum of the amount so determined by the President and shall be entitled

to sue the United States to recover such further sum, as, added to the said seventy-five per centum, will make up such amount as will be just compensation therefor, in the manner provided for by section twenty-four, paragraph twenty, and section one hundred and forty-five of the Judicial Code. Upon the taking over of said property by the President as aforesaid, the title to all such property so taken over shall immediately vest in the United States. For the purposes of this Act there is hereby appropriated out of any money in the Treasury of the United States not otherwise appropriated the sum of \$1,000,000, or so much thereof as may be necessary: *Provided*, That no railroad shall be built in the District of Columbia under this Act, until Congress has approved the point from which such road may start and also the route to be followed in the District of Columbia. [— *Stat. L.* —.]

An Act Making appropriations for the naval service for the fiscal year ending June thirtieth, nineteen hundred and nineteen, and for other purposes.

[*Act of July 1, 1918, ch. —, — Stat. L. —.*]

[Leases of water-front property from state or municipality — title to improvements thereon.] * * * The Secretary of the Navy is authorized in leasing water-front property from any State or municipality where the State law or charter of the municipality requires that the improvements placed upon leased lands shall at the termination of the lease become the property of the State or municipality, to provide, as a part or all of the consideration therefor, that improvements placed thereon by the United States shall become the property of the lessor upon the expiration of the lease or any renewal thereof. [— *Stat. L.* —.]

[Active list of navy — enlisted strength — increase.] * * * That the authorized enlisted strength of the active list of the Navy is hereby increased from eighty-seven thousand to one hundred and thirty-one thousand four hundred and eighty-five. [— *Stat. L.* —.]

[Pay and allowances of officers — chief of naval operations — Admiral and Vice Admiral — chief of bureaus — Judge Advocate General.] That hereafter the Chief of Naval Operations shall receive the allowances which are now or may hereafter be prescribed by or in pursuance of law for the grade of general in the Army, and the officers of the Navy holding the rank and title of Admiral and Vice Admiral in the Navy while holding such rank and title shall receive the allowances of a General and Lieutenant General of the Army, respectively. And hereafter chiefs of bureaus of the Navy Department, including the Judge Advocate General of the Navy, shall, while so serving, have corresponding rank and shall receive the same pay and allowances as are now or may hereafter be prescribed by or in pursuance of law for chiefs of bureaus of the War Department and the Judge Advocate General of the Army. [— *Stat. L.* —.]

[Amendments as reducing pay and allowances of officers and enlisted men.] That nothing contained in the preceding amendments of the Act of May twenty-second, nineteen hundred and seventeen, shall be construed to reduce the pay or allowances now authorized by law for any commissioned, warrant, or appointed officer or any enlisted man of the active or retired lists of the Navy. [*— Stat. L. —.*]

The amendments of the Act of May 22, 1917, ch. —, are incorporated therein, *supra*, p. 523, and *infra*, p. 568.

[Retired officers—war or national emergency—active duty—promotion—pay and allowances.] That hereafter, during the existence of war or of a national emergency declared by the President to exist, any commissioned or warrant officer of the Navy, Marine Corps, or Coast Guard of the United States on the retired list may, in the discretion of the Secretary of the Navy, be ordered to active duty at sea or on shore; and any retired officer performing such active duty in time of war or national emergency, declared as aforesaid, shall be entitled to promotion on the retired list to the grade or rank, not above that of lieutenant commander in the Navy or major in the Marine Corps or captain in the Coast Guard, and shall thereafter receive the pay and allowances thereof, which his total active service as an officer both prior and subsequent to retirement, in the manner rendered by him, would have enabled him to attain in due course of promotion had such service been rendered continuously on the active list during the period of time last past.

That during the existence of war or of a national emergency, declared as aforesaid, any commissioned or warrant officer of the Navy, Marine Corps or Coast Guard of the United States on the retired list, while on active duty, may be temporarily advanced to and commissioned in such higher grade or rank on the retired list, not above that of lieutenant commander in the Navy or major in the Marine Corps or captain in the Coast Guard, as the President may determine, and any officer so advanced shall, while on active duty, be entitled to the same pay and allowances as officers of like grade or rank on the active list: *Provided*, That any such commissioned or warrant officer who has been so temporarily advanced in grade or rank shall, upon his relief from active duty, or in any case not later than six months after the termination of the war or of the national emergency, declared as aforesaid, revert to the grade or rank on the retired list and to the pay and allowance status which he would have held had he not been so temporarily advanced: *Provided further*, That nothing in this Act shall operate to reduce the pay and allowances now allowed by law to retired officers. [*— Stat. L. —.*]

[Promotions by selection—advancement to ranks of commander, captain and rear admiral.] The provisions of existing laws with reference to promotion by selection in the line of the Navy are hereby extended to include and authorize advancement to the ranks of commander, captain, and rear admiral in the Staff Corps of the Navy under the same conditions in all respects except as may be necessary to adapt the said provisions to such Staff Corps: *Provided*, That boards of selection shall in each case be composed, when practicable, of not less than five members of the corps

concerned and promotions shall be made on the basis of fitness alone by selection from among the officers of the rank next below: *Provided further*, That the requirements for sea service in grade, length of service in grade and maximum age in grade for promotion shall not apply. [— *Stat. L.* —.]

[**Allowances — increase — performance of aviation duty.**] That hereafter the allowances of officers, enlisted men, and student flyers of the naval service shall in no case be increased by reason of the performance of aviation duty. [— *Stat. L.* —]

[**Assignment of quarters or commutation — authority of Secretary of Navy.**] * * * That hereafter the Secretary of the Navy may determine where and when there are no public quarters available for persons in the Navy and Marine Corps, or serving therewith, within the meaning of any Acts or parts of Acts relating to the assignment of quarters or commutation therefor. [— *Stat. L.* —.]

[**Civilian employees — cash rewards for suggestion.**] That the Secretary of the Navy is hereby authorized, in his discretion and under such rules and regulations as he may prescribe, to pay cash rewards to civilian employees of the Navy Department or the Naval Establishment or other persons in civil life when due to a suggestion or series of suggestions by them there results an improvement or economy in manufacturing process or plant or naval material: *Provided*, That such sums as may be awarded to employees or other persons in civil life in accordance with this Act shall be paid them out of current naval appropriations in addition to their usual compensation: *Provided further*, That no employee or other person in civil life shall be paid a reward under this Act until he has properly executed an agreement to the effect that the use by the United States of the suggestion or series of suggestions made by him shall not form the basis of a further claim of any nature from the United States by him, his heirs, or assigns. [— *Stat. L.* —.]

[**Enlisted men on retired list — active service — promotions — pay and benefits.**] * * * That any enlisted man of the Navy or Marine Corps upon the retired list who has been ordered into active service since April sixth, nineteen hundred and seventeen, or who may hereafter be ordered into active service, shall be eligible for promotion and he shall be entitled to the pay and benefits of continuous service of such rank and for such length of time as he is or has been employed in active service, and when relieved of active service shall retain upon the retired list the rank and service held by him at the time of such relief, with the pay and allowances of such rank on the retired list; and the accounting officers of the Treasury are hereby directed to allow in the accounts of any enlisted man of the Navy or Marine Corps who resigned from the retired list in order to reenlist for appointment in a higher grade, the same continuous service pay and the benefits of such rank to which he may have been appointed upon reenlistment, as if his service had been continuous, and any difference in pay from the date of reenlistment shall be credited to his account. [— *Stat. L.* —]

(a) **[Production of ships or war material for navy—power of precedent affecting — words in statute defined.]** * * * That the word "person" as used in paragraph (b), (c), next hereafter shall include any individual, trustee, firm, association, company, or corporation. The word "ship" shall include any boat, vessel, submarine, or any form of aircraft, and the parts thereof. The words "war material" shall include arms, armament, ammunition, stores, supplies and equipment for ships and airplanes, and everything required for or in connection with the production thereof. The word "factory" shall include any factory, workshop, engine works, building used for manufacture, assembling, construction, or any process, and any shipyard or dockyard. The words "United States" shall include the Canal Zone and all territory and waters, continental and insular, subject to the jurisdiction of the United States. [*—Stat. L. —.*]

(b) **[Contracts for ships or war material — precedence — cancellation — commandeering factories or output of factories.]** The President is hereby authorized and empowered, within the limits of the amounts appropriated therefor:

First. To place an order with any person for such ships or war material as the necessities of the Government, to be determined by the President, may require and which are of the nature, kind, and quantity usually produced or capable of being produced by such person. Compliance with all such orders shall be obligatory on any person to whom such order is given, and such order shall take precedence over all other orders and contracts theretofore placed with such person. If any person owning, leasing, or operating any factory equipped for the building or production of ships or war material for the Navy shall refuse or fail to give to the United States such preference in the execution of such an order, or shall refuse to build, supply, furnish, or manufacture the kind, quantity, or quality of ships of war materials so ordered at such reasonable price as shall be determined by the President, the President may take immediate possession of any factory of such person, or of any part thereof without taking possession of the entire factory, and may use the same at such times and in such manner as he may consider necessary or expedient.

Second. Within the limit of the amounts appropriated therefor, to modify or cancel any existing contract for the building, production, or purchase of ships or war material; and if any contractor shall refuse or fail to comply with the contract as so modified, the President may take immediate possession of any factory of such contractor, or any part thereof without taking possession of the entire factory, and may use the same at such times and in such manner as he may consider necessary or expedient.

Third. To require the owner or occupier of any factory in which ships or war material are built or produced to place at the disposal of the United States the whole or any part of the output of such factory, and within the limit of the amounts appropriated therefor, to deliver such output or parts thereof in such quantities and at such times as may be specified in the order at such reasonable price as shall be determined by the President.

Fourth. To requisition and take over for use or operation by the Government any factory, or any part thereof, without taking possession of the entire factory, whether the United States has or has not any contract with the owner or occupier of such factory.

That all authority granted to the President herein or by him delegated shall cease six months after a final treaty of peace shall be proclaimed between this Government and the German Empire. [— *Stat. L.* —.]

(d) [Compensation where contracts cancelled or factories or output commandeered.] That whenever the United States shall cancel or modify any contract, make use of, assume, occupy, requisition, or take over any factory or part thereof, or any ships or war material, in accordance with the provisions of paragraph (b), it shall make just compensation therefor, to be determined by the President, and if the amount thereof so determined by the President is unsatisfactory to the person entitled to receive the same, such person shall be paid seventy-five per centum of the amount so determined by the President and shall be entitled to sue the United States to recover such further sum as added to said seventy-five per centum shall make up such amount as will be just compensation therefor, in the manner provided for by section twenty-four, paragraph twenty, and section one hundred and forty-five of the Judicial Code. [— *Stat. L.* —.]

For Judicial Code, § 24, par. 20, see 1912 Supp. Fed. Stat. Ann. 140; 4 Fed. Stat. Ann. (2d ed.) 1059.

For Judicial Code, § 145, see 1912 Supp. Fed. Stat. Ann. 200; 5 Fed. Stat. Ann. (2d ed.) 649.

[Ordnance material — available for issue under what appropriation.]
 * * * That ordnance materials procured under the various Ordnance appropriations shall hereafter be available for issue, to meet the general needs of the naval service, under the appropriation from which procured. [— *Stat. L.* —.]

[Bureau of supplies — transportation of fuel.] * * * That when, in the opinion of the President, the prices asked for the charter of vessels for the transportation of fuel are excessive, he is authorized to purchase vessels suitable for the purpose, and, if money is not otherwise available, to pay for them from the appropriation "Fuel and transportation." [— *Stat. L.* —.]

[Ordnance material — transfer to War Department.] * * * Such naval ordnance and ordnance material as the Secretary of War and the Secretary of the Navy may determine necessary is authorized to be transferred from the Navy Department to the War Department: *Provided*, That if such ordnance and ordnance material is obsolete for naval purposes the transfer shall be made without reimbursement and payment to the Navy for other ordnance and ordnance material transferred hereunder shall be made only after estimates shall have been submitted to Congress and a specific appropriation for such payment shall have been made. [— *Stat. L.* —.]

This is from the Fortifications Appropriation Act of July 8, 1918, ch. —,

II. NAVAL FLYING CORPS

An Act Making appropriations for the naval service for the fiscal year ending June thirtieth, nineteen hundred and seventeen, and for other purposes.

[*Act of Aug. 29, 1916, ch. 417, 39 Stat. L. 556.*]

[Naval Flying Corps — composition.] The Naval Flying Corps shall be composed of one hundred and fifty officers and three hundred and fifty enlisted men, detailed, appointed, commissioned, enlisted, and distributed in the various grades, ranks, and ratings of the Navy and Marine Corps as hereafter provided. The said number of officers, student flyers, and enlisted men shall be in addition to the total number of officers and enlisted men which is now or may hereafter be provided by law for the other branches of the naval service. [*39 Stat. L. 582.*]

The foregoing and the following seventeen paragraphs of the text are from the Naval Appropriation Act of Aug. 29, 1916, ch. 417, cited above.

[Detail of officers — student flyers — pay and allowances.] The number of officers detailed to duty in aircraft involving actual flying in any one year shall be in accordance with the requirements of the Air Service as determined by the Secretary of the Navy: *Provided*, That the officers so detailed from the line of the Navy and from the Marine Corps shall not exceed the total number herein prescribed for the Naval Flying Corps: *Provided further*, That the proportion of line officers of the Navy and of the Marine Corps thus detailed shall be the same as the proportion established for the regular services: *And provided further*, That the student flyers hereinafter provided for shall be in addition to the officers and enlisted men comprising the Naval Flying Corps.

The officers detailed and the enlisted men of the Naval Flying Corps shall receive the same pay and allowances that are now provided by law for officers and enlisted men of the same grade or rank and rating in the Navy and Marine Corps detailed to duty with aircraft involving actual flying. [*39 Stat. L. 582.*]

[Acting ensigns or second lieutenants — qualifications — detail for flying — promotion — choice of duties.] The Secretary of the Navy is hereby authorized to appoint annually in the line of the Navy and the Marine Corps for a period of two years following the passage of this Act, in order of merit as determined by such competitive examinations as he may prescribe, fifteen acting ensigns or acting second lieutenants for the performance of aeronautic duties only. Persons so appointed must be citizens of the United States, and may be appointed from warrant officers or enlisted men of the naval service or from civil life, and must, at the time of appointment, be not less than eighteen or more than twenty-four years of age: *Provided*, That no person shall be so appointed until he has been found physically qualified by a board of medical officers of the Navy for the performance of the duties required: *Provided further*, That the number of such appointments to the line of the Navy and of the Marine Corps shall be in the proportion decided for the regular services. Such appoint-

ments shall be for a probationary period of three years and may be revoked at any time by the Secretary of the Navy.

Such acting ensigns and acting second lieutenants shall be detailed to duty in the Naval Flying Corps in aircraft involving actual flying.

Such acting ensigns of the Navy and acting second lieutenants of the Marine Corps shall, upon completion of the probationary period of three years, be appointed acting lieutenants of the junior grade, or acting first lieutenants, respectively, by the Secretary of the Navy for the performance of aeronautic duties only, after satisfactorily passing such examinations as he may prescribe, and after having been recommended for promotion by the examining board and found physically qualified by a board of medical officers of the Navy. Such appointments shall be for a probationary period of four years and may be revoked at any time by the Secretary of the Navy.

Such acting lieutenants (junior grade) and acting first lieutenants may elect to qualify for aeronautic duty only or to qualify for all the duties of officers of the same grade in the Navy and in the Marine Corps, respectively. Those officers who elect to qualify for aeronautic duty only shall be detailed to duty in the Naval Flying Corps involving actual flying in aircraft. Those officers who elect to qualify for the regular duties of their grade shall be detailed to duty in the regular service for at least two years to allow them to prepare for such qualification. [39 Stat. L. 583.]

[Commissions for aeronautic duty.] Such acting lieutenants (junior grade) and acting first lieutenants who have elected to qualify for aeronautic duty only shall, upon completion of the probationary period of four years, be commissioned in the grade of lieutenant of the line of the Navy or captain of the Marine Corps for aeronautic duties only, after satisfactorily passing such competitive examination as may be prescribed by the Secretary of the Navy to determine their moral, physical, and professional qualifications for such commissions and the order of rank in which they shall be commissioned. Such lieutenants for aeronautic duty only shall be borne on the list as extra numbers, taking rank with and next after officers of the same date of commission. [39 Stat. L. 583.]

[Commissions for line duty.] Such acting lieutenants (junior grade) and acting first lieutenants who have elected to qualify for the regular duties of the line of the Navy and of the Marine Corps, respectively, shall, upon completion of the probationary period of four years, two years of which shall have been on such regular duties, be commissioned in the grade of the line of the Navy or Marine Corps according to his length of service, after passing satisfactorily such competitive examinations as may be prescribed by the Secretary of the Navy to determine their moral, physical, and professional qualifications for such commissions and to determine the order of rank in which they shall be commissioned. Such officers of the line of the Navy and Marine Corps will be borne upon the lists of their respective corps as extra numbers, taking rank with and next after officers of the regular services of the same date of commissions. [39 Stat. L. 584.]

[Transfers to Reserve Flying Corps — discharge.] Acting lieutenants (junior grade) of the line of the Navy for aeronautic duties only and act-

ing first lieutenants of the Marine Corps for aeronautic duty only who have completed the probationary period of four years may, upon examination for commissions to the next higher grade, if recommended by the board of examination, be transferred to the Naval Reserve Flying Corps and commissioned in the same grade or the next higher grade as may be recommended in accordance with their qualifications as determined by the examination: *Provided*, That at any time during such probationary period any such officer can, upon his own request, if his record warrants it, be transferred to the Naval Reserve Flying Corps and commissioned in the acting grade he then holds. Any officer of the Naval Flying Corps holding an appointment of student flyer or acting ensign, second lieutenant, lieutenant (junior grade), or first lieutenant, who, upon examination for promotion, is found not qualified shall, if not recommended by the examining board for transfer to the Naval Reserve Flying Corps, be honorably discharged from the naval service. [39 Stat. L. 584.]

[Promotion of officers for aeronautic duty only.] Officers commissioned for aeronautic duty only shall be eligible for advancement to the higher grades, not above captain in the Navy or colonel in the Marine Corps, in the same manner as other officers whose employment is not so restricted, except that they shall be eligible to promotion without restriction as to sea duty, and their professional examinations shall be restricted to the duty to which personally assigned: *Provided*, That any such officer must serve at least three years in any grade before being eligible to promotion to the next higher grade. [39 Stat. L. 584.]

[Detail from other branches as student aviators or airmen — pay and allowances.] Nothing in this Act shall be so construed as to prevent the detail of officers and enlisted men of other branches of the Navy as student aviators or student airmen in such numbers as the needs of the service may require.

Such officers and enlisted men, while detailed as student aviators and student airmen involving actually flying in aircraft, shall receive the same pay and allowances that are now provided by law for officers and enlisted men of the same grade or rank and rating in the Navy detailed for duty with aircraft. [39 Stat. L. 584.]

[Student flyers from enlisted men or civil life — pay and allowances — term of appointment — revocation or transfer.] The Secretary of the Navy is hereby authorized to appoint annually for a period of four years, from enlisted men of the naval service, or from citizens of the United States in civil life, not to exceed thirty student flyers for instruction and training in aeronautics who shall receive the same pay and allowances as midshipmen at the United States Naval Academy: *Provided*, That persons so appointed must, at the time of appointment, be not less than seventeen or more than twenty-one years of age: *Provided further*, That no person shall be appointed a student flyer until he shall have qualified therefor by such examination as may be prescribed by the Secretary of the Navy.

The appointment of student flyers shall continue in force for two years, unless sooner revoked by the Secretary of the Navy, in his discretion, and

ments shall be for a probationary period of three years and may be revoked at any time by the Secretary of the Navy.

Such acting ensigns and acting second lieutenants shall be detailed to duty in the Naval Flying Corps in aircraft involving actual flying.

Such acting ensigns of the Navy and acting second lieutenants of the Marine Corps shall, upon completion of the probationary period of three years, be appointed acting lieutenants of the junior grade, or acting first lieutenants, respectively, by the Secretary of the Navy for the performance of aeronautic duties only, after satisfactorily passing such examinations as he may prescribe, and after having been recommended for promotion by the examining board and found physically qualified by a board of medical officers of the Navy. Such appointments shall be for a probationary period of four years and may be revoked at any time by the Secretary of the Navy.

Such acting lieutenants (junior grade) and acting first lieutenants may elect to qualify for aeronautic duty only or to qualify for all the duties of officers of the same grade in the Navy and in the Marine Corps, respectively. Those officers who elect to qualify for aeronautic duty only shall be detailed to duty in the Naval Flying Corps involving actual flying in aircraft. Those officers who elect to qualify for the regular duties of their grade shall be detailed to duty in the regular service for at least two years to allow them to prepare for such qualification. [39 Stat. L. 583.]

[Commissions for aeronautic duty.] Such acting lieutenants (junior grade) and acting first lieutenants who have elected to qualify for aeronautic duty only shall, upon completion of the probationary period of four years, be commissioned in the grade of lieutenant of the line of the Navy or captain of the Marine Corps for aeronautic duties only, after satisfactorily passing such competitive examination as may be prescribed by the Secretary of the Navy to determine their moral, physical, and professional qualifications for such commissions and the order of rank in which they shall be commissioned. Such lieutenants for aeronautic duty only shall be borne on the list as extra numbers, taking rank with and next after officers of the same date of commission. [39 Stat. L. 583.]

[Commissions for line duty.] Such acting lieutenants (junior grade) and acting first lieutenants who have elected to qualify for the regular duties of the line of the Navy and of the Marine Corps, respectively, shall, upon completion of the probationary period of four years, two years of which shall have been on such regular duties, be commissioned in the grade of the line of the Navy or Marine Corps according to his length of service, after passing satisfactorily such competitive examinations as may be prescribed by the Secretary of the Navy to determine their moral, physical, and professional qualifications for such commissions and to determine the order of rank in which they shall be commissioned. Such officers of the line of the Navy and Marine Corps will be borne upon the lists of their respective corps as extra numbers, taking rank with and next after officers of the regular services of the same date of commissions. [39 Stat. L. 584.]

[Transfers to Reserve Flying Corps — discharge.] Acting lieutenants (junior grade) of the line of the Navy for aeronautic duties only and act-

ing first lieutenants of the Marine Corps for aeronautic duty only who have completed the probationary period of four years may, upon examination for commissions to the next higher grade, if recommended by the board of examination, be transferred to the Naval Reserve Flying Corps and commissioned in the same grade or the next higher grade as may be recommended in accordance with their qualifications as determined by the examination: *Provided*, That at any time during such probationary period any such officer can, upon his own request, if his record warrants it, be transferred to the Naval Reserve Flying Corps and commissioned in the acting grade he then holds. Any officer of the Naval Flying Corps holding an appointment of student flyer or acting ensign, second lieutenant, lieutenant (junior grade), or first lieutenant, who, upon examination for promotion, is found not qualified shall, if not recommended by the examining board for transfer to the Naval Reserve Flying Corps, be honorably discharged from the naval service. [39 Stat. L. 584.]

[Promotion of officers for aeronautic duty only.] Officers commissioned for aeronautic duty only shall be eligible for advancement to the higher grades, not above captain in the Navy or colonel in the Marine Corps, in the same manner as other officers whose employment is not so restricted, except that they shall be eligible to promotion without restriction as to sea duty, and their professional examinations shall be restricted to the duty to which personally assigned: *Provided*, That any such officer must serve at least three years in any grade before being eligible to promotion to the next higher grade. [39 Stat. L. 584.]

[Detail from other branches as student aviators or airmen — pay and allowances.] Nothing in this Act shall be so construed as to prevent the detail of officers and enlisted men of other branches of the Navy as student aviators or student airmen in such numbers as the needs of the service may require.

Such officers and enlisted men, while detailed as student aviators and student airmen involving actually flying in aircraft, shall receive the same pay and allowances that are now provided by law for officers and enlisted men of the same grade or rank and rating in the Navy detailed for duty with aircraft. [39 Stat. L. 584.]

[Student flyers from enlisted men or civil life — pay and allowances — term of appointment — revocation or transfer.] The Secretary of the Navy is hereby authorized to appoint annually for a period of four years, from enlisted men of the naval service, or from citizens of the United States in civil life, not to exceed thirty student flyers for instruction and training in aeronautics who shall receive the same pay and allowances as midshipmen at the United States Naval Academy: *Provided*, That persons so appointed must, at the time of appointment, be not less than seventeen or more than twenty-one years of age: *Provided further*, That no person shall be appointed a student flyer until he shall have qualified therefor by such examination as may be prescribed by the Secretary of the Navy.

The appointment of student flyers shall continue in force for two years, unless sooner revoked by the Secretary of the Navy, in his discretion, and

at the end of such period student flyers shall be examined for qualification as qualified aviators: *Provided*, That if such student flyers are not qualified, their appointment will be revoked, or, if recommended by the examining board, they shall be transferred to the Naval Reserve Flying Corps and commissioned as ensigns therein. [39 Stat. L. 584.]

[Qualified aviators — rank and pay — promotion — transfer.] Student flyers shall, after receiving a certificate of qualification as an aviator for actual flying in aircraft, rank with midshipmen and shall receive the same pay and allowances as midshipmen, plus fifty per centum thereof: *Provided*, That student flyers who have qualified as aviators under the provisions of this Act shall be commissioned acting ensigns for aeronautic duties only, after three years' service: *Provided further*, That they shall have been examined by a board of officers of the Naval Flying Corps to determine by a competitive examination prescribed by the Secretary of the Navy their moral, physical, and professional fitness and the order of rank in which they shall be commissioned: *And provided further*, That any student flyer qualified as an aviator may at any time, in the discretion of the Secretary of the Navy, if his record warrants it, at his own request, be transferred to the Naval Reserve Flying Corps and be commissioned as ensign therein: *And provided further*, That student flyers not considered qualified for commission as acting ensigns for aeronautic duties only may, upon recommendation of the examining board, be transferred to the Naval Reserve Flying Corps and be commissioned as ensigns therein. [39 Stat. L. 585.]

[Aeronautic training schools authorized.] The Secretary of the Navy is hereby authorized to establish aeronautic schools for the instruction and training of student flyers and prescribe the course of instruction and qualifications for certificate of graduation as a qualified aviator. [39 Stat. L. 585.]

[Temporary detail for aircraft duty.] Nothing in this or any other Act shall be so construed as to prevent the temporary detail of officers and enlisted men of any branch of the Navy for duty with aircraft. [39 Stat. L. 585.]

[Aviation accidents — gratuity for death from — pensions for death or disability.] In the event of the death of an officer or enlisted man or student flyer of the Naval Flying Corps from wounds or disease, the result of an aviation accident, not the result of his own misconduct, received while engaged in actual flying in or in handling aircraft, the gratuity to be paid under the provisions of the Act approved August twenty-second, nineteen hundred and twelve, entitled "An Act making appropriations for the naval service for the fiscal year ending June thirtieth, nineteen hundred and thirteen, and for other purposes," shall be an amount equal to one year's pay at the rate received by such officer or enlisted man or student flyer at the time of the accident resulting in his death. In all cases where an officer or enlisted man or student flyer of the Navy or Marine Corps dies, or where a student flyer or an enlisted man of the Navy or

Marine Corps is disabled by reason of any injury received or disease contracted in line of duty, the result of an aviation accident, received while employed in actual flying in or in handling aircraft, the amount of pension allowed shall be double that authorized to be paid should death or the disability have occurred by reason of an injury received or disease contracted in line of duty not the result of an aviation accident. [39 Stat. L. 585.]

For the Act of Aug. 22, 1912, ch. 335, mentioned in the text, see 1914 Supp. Fed. Stat. Ann. 290. Said Act was an amendment of the Act of May 13, 1908, ch. 166. See 6 Fed. Stat. Ann. (2d ed.) 1210.

[Application of Navy laws, etc.—retirement or retired pay.] Student flyers and the acting ensigns and acting lieutenants (junior grade) and acting second and first lieutenants for aeronautic duties only provided for herein shall be subject to the laws and regulations and orders for the government of the Navy, but shall not be entitled to retirement or retired pay. [39 Stat. L. 585.]

[Ratings of enlisted men.] The enlisted personnel of the Naval Flying Corps shall be distributed by the Secretary of the Navy in the various ratings as now obtained in the Navy in so far as such ratings are applicable to duties connected with aircraft. [39 Stat. L. 585.]

[Transfer of enlisted men.] Within the first two years after the approval of this Act enlisted men may be transferred from other branches of the Naval Service to the Naval Flying Corps, under regulations established by the Secretary of the Navy governing such transfer and the qualifications for this corps: *Provided*, That the number so transferred shall not exceed one-half the total number of enlisted men allowed by this Act. [39 Stat. L. 586.]

[Regulations.] The Secretary of the Navy shall establish regulations governing the term of enlistment, the qualifications, and advancement of the enlisted men of the Flying Corps. [39 Stat. L. 586.]

[Appointment of enlisted men as student flyers.] Any enlisted man who passes satisfactorily the prescribed examination and is recommended by a board of officers may be appointed a student flyer as herein provided. [39 Stat. L. 586.]

III. NAVAL RESERVE

An Act Making appropriations for the naval service for the fiscal year ending June thirtieth, nineteen hundred and seventeen, and for other purposes.

[Act of Aug. 29, 1916, ch. 417, 39 Stat. L. 556.]

NAVAL RESERVE FORCE

[Creation of Naval Reserve Force — classes — composition — aliens — naturalization.] There is hereby established, under the Department of

the Navy, a Naval Reserve Force, to consist of six classes, designated as follows and as hereinafter described:

- First. The Fleet Naval Reserve.
- Second. The Naval Reserve.
- Third. The Naval Auxiliary Reserve.
- Fourth. The Naval Coast Defense Reserve.
- Fifth. The Volunteer Naval Reserve.
- Sixth. Naval Reserve Flying Corps.

The Naval Reserve Force shall be composed of citizens of the United States who, by enrolling under regulations prescribed by the Secretary of the Navy or by transfer thereto as in this Act provided, obligate themselves to serve in the Navy in time of war or during the existence of a national emergency, declared by the President: *Provided*, That citizens of the insular possessions of the United States may enroll in the Naval Auxiliary Reserve: *Provided further*, That such persons who are not citizens of the United States, but who have or shall have declared their intention to become citizens of the United States, and who are citizens of countries which are at peace with the United States, may enroll in the Naval Reserve Force subject to the condition that they may be discharged from such enrollment at any time within the discretion of the Secretary of the Navy, and such persons who may, under existing law, become citizens of the United States, and who render honorable service in the Naval Reserve Force in time of war for a period of not less than one year may become citizens of the United States without proof of residence on shore and without further requirement than proof of good moral character and certificate from the Secretary of the Navy that such honorable service was actually rendered. [39 Stat. L. 587 as amended by — Stat. L. —.]

The foregoing paragraph and the following nineteen paragraphs of the text are from the Naval Appropriation Act of Aug. 29, 1916, ch. 417, cited above.

This paragraph was amended to read as here given by the Act of May 22, 1917, ch. —, the amendment consisting of the addition of the second proviso beginning with the words "*Provided further*" to the end of the text.

[Regulations.] The Secretary of the Navy shall make all necessary and proper regulations not inconsistent with law for the administration of the provisions of this Act which relate to the Naval Reserve Force. [39 Stat. L. 587.]

[Order for active service.] Members of the Naval Reserve Force may be ordered into active service in the Navy by the President in time of war or when, in his opinion, a national emergency exists. [39 Stat. L. 587.]

[Ranks, grades, etc.] There shall be allowed in the Naval Reserve Force the various ratings, grades, and ranks, not above the rank of lieutenant commander, corresponding to those in the Navy. Officers of the line may be appointed for deck or engineering duties, as they may elect. [39 Stat. L. 587.]

[Commissions — warrants — retainer pay, etc.—rank of officers.] Members of the Naval Reserve Force appointed to commissioned grades shall be commissioned by the President alone, and members of such force

appointed to warrant grades shall be warranted by the Secretary of the Navy: *Provided*, That officers so warranted or commissioned shall not be deprived of the retainer pay, allowances, or gratuities to which they would otherwise be entitled. Officers of the Naval Reserve Force shall rank with but after officers of corresponding rank in the Navy. [39 Stat. L. 587.]

[Term of service — oath of allegiance.] Enrollment and reenrollment shall be for terms of four years, but members shall in time of peace, when no national emergency exists, be discharged upon their own request upon reimbursing the Government for any clothing gratuity that may have been furnished them during their current enrollment.

Persons enrolling shall be required to take the oath of allegiance to the United States. [39 Stat. L. 587.]

[Provisional grade, etc.— instruction service — confirmation of grade.] When first enrolled members of the Naval Reserve Force, except those in the Fleet Naval Reserve, shall be given a provisional grade, rank or rating in accordance with their qualifications determined by examination. They may thereafter, upon application, be assigned to active service in the Navy for such periods of instruction and training as may enable them to qualify for and be confirmed in such grade, rank or rating.

No member shall be confirmed in his provisional grade, rank or rating until he shall have performed the minimum amount of active service required for the class in which he is enrolled, nor until he has duly qualified by examination for such rank or rating under regulations prescribed by the Secretary of the Navy. [39 Stat. L. 587.]

[Examinations, etc., of officers.] No person shall be appointed or commissioned as an officer in any rank in any class of the Naval Reserve Force, or promoted to a higher rank therein, unless he shall have been examined and recommended for such appointment, commission, or promotion by a board of three naval officers not below the rank of lieutenant commander, nor until he shall have been found physically qualified by a board of medical officers to perform the duties required in time of war, except that former officers and midshipmen of the Navy, who shall have left the service under honorable conditions and who shall have enrolled in the Naval Reserve Force, may be appointed in the grade and rank last held by them without examination other than the physical examination above prescribed. [39 Stat. L. 587.]

[Retainer pay.] The retainer pay of all members of the Naval Reserve Force, except the Volunteer Naval Reserve, while enrolled in a provisional rank or rating, and until such time as they shall have been confirmed in such rank or rating, shall be \$12 per annum. Thereafter, the retainer pay shall be that prescribed for members in the various classes.

Retainer pay shall be in addition to any pay to which a member may be entitled by reason of active service.

Retainer pay shall only be paid to members of the Naval Reserve Force upon their making such reports concerning their movements and occupations as may be required by the Secretary of the Navy. [39 Stat. L. 588.]

[Reenrollment — increased pay — retirement — cash gratuity.] Members of the Naval Reserve Force who reenroll for a term of four years within four months from the date of the termination of their last term of enrollment, and who shall have performed the minimum amount of active service required during the preceding term of enrollment, shall, for each such reenrollment, receive an increase of twenty-five per centum of their base retainer pay: *Provided*, That enrolled members who shall have completed twenty years of service in the Naval Reserve Force, and who shall have performed the minimum amount of active service required in their class for maintaining efficiency during each term of enrollment, shall, upon their own application, be retired with the rank or rating held by them at the time, and shall receive in lieu of any pay, a cash gratuity equal to the total amount of their retainer pay during the last term of their enrollment. [39 Stat. L. 588.]

[Payment of retainer pay.] Retainer pay shall be paid annually or at shorter intervals, as the Secretary of the Navy, in his discretion, may direct. [39 Stat. L. 588.]

[Other public service.] No existing law shall be construed to prevent any member of the Naval Reserve Force from accepting employment in any branch of the public service, except as an officer or enlisted man in any branch of the military service of the United States or any State thereof, nor from receiving the pay and allowances incident to such employment in addition to his retainer pay. [39 Stat. L. 588.]

[Application of Navy laws — badge or button — unauthorized use.] Enrolled members of the Naval Reserve Force shall be subject to the laws, regulations, and orders for the government of the Regular Navy only during such time as they may by law be required to serve in the Navy, in accordance with their obligations, and when on active service at their own request as herein provided, and when employed in authorized travel to and from such active service in the Navy. Members of the Naval Reserve Force shall be issued a distinctive badge or button which may be worn with civilian dress, and whoever, not being a member of the Naval Reserve Force of the United States and not entitled under the law to wear the same, willfully wears or uses the badge or button or who uses or wears the same to obtain aid or assistance thereby, shall be punished by a fine of not more than \$20 or by imprisonment for not more than thirty days or by both such fine and imprisonment. [39 Stat. L. 588.]

[Active service — pay — not in active service.] All members of the Naval Reserve Force shall, when actively employed as set forth in this Act, be entitled to the same pay, allowances, gratuities, and other emoluments as officers and enlisted men of the naval service on active duty of corresponding rank or rating and of the same length of service. When not actively employed in the Navy, members of the Naval Reserve Force shall not be entitled to any pay, bounty, gratuity, or pension except as expressly provided for members of the Naval Reserve Force by the provisions of this Act. [39 Stat. L. 588.]

[Service in time of war.] Enrolled members of the Naval Reserve Force may, in time of war or national emergency, be required to perform active service in the Navy throughout the war or until the national emergency ceases to exist. [39 Stat. L. 588.]

[Uniform gratuity for training — for service in time of war — deduction on withdrawal.] Members of the Naval Reserve Force shall, upon first reporting for active service for training during each period of enrollment, be credited with a uniform gratuity of \$50 for officers and of \$30 for men.

Upon reporting for active service in time of war or national emergency the uniform gratuity shall be \$150 for officers and \$60 for men, or the difference between these amounts and any amounts that may have been credited as a uniform gratuity during the current enrollment: *Provided*, That should any member of the Naval Reserve Force sever his connection with the service without compulsion on part of the Government before the expiration of his term of enrollment, the amount so credited shall be deducted from any money that may be or may become due him. [39 Stat. L. 589.]

[Auxiliary vessels — preference to Reserve Force.] Hereafter, in shipping officers and men for service on board United States auxiliary vessels, preference shall be given to members of the Naval Reserve Force, and, after two years from the date of approval of this Act, no person shall be shipped for such service who is not a member of the Naval Reserve Force herein provided. [39 Stat. L. 589.]

[Transfer of members to other classes.] Members of the Naval Reserve Force may, upon application, be transferred from one class to another class for which qualified under the provisions of this Act; and may in time of war volunteer for and be assigned to duties prescribed for any class which they may be deemed competent to perform. [39 Stat. L. 589.]

[Flag or pennant.] The Secretary of the Navy shall prescribe a suitable flag, or pennant, that may be flown as an insignia on private vessels or vessels of the merchant service commanded by officers of the Naval Reserve Force: *Provided*, That it shall not be flown in lieu of the National ensign. [39 Stat. L. 589.]

[Schools for instruction — admissions — certificates on completing course.] * * * The Secretary of the Navy is hereby authorized to establish schools or camps of instruction at such times and in such localities as he may deem advisable for the purpose of instructing members and applicants for membership in the Naval Reserve Force. No applicant shall be accepted for instruction unless he agrees to abide by the regulations of the school and pursue the course prescribed by the Secretary of the Navy. Persons who satisfactorily complete the course will be given certificates of qualification for the rank or rating for which duly qualified, and may be permitted to enroll in the proper class of the reserve in such rank or rating. For the purpose of carrying into effect this paragraph of the Act there is

hereby appropriated, out of any money in the Treasury not otherwise appropriated, \$30,000, which is hereby made available to be expended as the Secretary of the Navy may direct in the necessary equipment and maintenance of such schools and camps. [39 Stat. L. 589.]

[Qualifications for enlistment in.] Members of the Naval Reserve Force who have enrolled for general service and are citizens of the United States are eligible for membership in the Naval Reserve. No person shall be enrolled in or transferred to this class unless he establishes satisfactory evidence as to his qualifications for duty on board combatant ships of the Navy. [39 Stat. L. 591 as amended by — Stat. L. —.]

This paragraph was amended to read as here given by the Naval Appropriation Act of July 1, 1918, ch. —. As originally enacted it was as follows:

"Members of the Naval Reserve Force who have been or may be engaged in the seagoing profession, and who have enrolled for general service, shall be eligible for membership in the Naval Reserve. No person shall be first enrolled in this class who is less than eighteen or more than thirty-five years of age, nor unless he furnishes satisfactory evidence as to his ability and character; nor shall any person be appointed an officer in this class unless he shall have had not less than two years' experience as an officer on board of lake or ocean going vessels."

[Service for rank — service during term.] The minimum active service required of members to qualify for confirmation in their rank or rating in this class shall be three months.

The minimum active service required for maintaining the efficiency of a member of this class is three months during each term of enrollment. This active service may be in one period or in periods of not less than three weeks each year. [39 Stat. L. 591.]

[United States Naval Reserve — continuous service pay — reenlistments — back pay or allowances.] * * * Any former member of class one of the United States Naval Reserve, established by the Act of March third, nineteen hundred and fifteen, "An Act making appropriations for the naval service for the fiscal year ending June thirtieth, nineteen hundred and sixteen, and for other purposes," who shall have reenlisted in the Navy prior to May first, nineteen hundred and seventeen, shall be held and considered to have reenlisted within four months from the date of discharge from the Navy for the purpose of continuous-service pay. And any such member of the said Naval Reserve who was serving therein on August twenty-ninth, nineteen hundred and sixteen, shall upon his application therefor, any time prior to July first, nineteen hundred and seventeen, be enrolled in the Naval Reserve Force, and any such person so enrolled shall, for all purposes, be considered as having served continuously in such Naval Reserve Force since August twenty-ninth, nineteen hundred and sixteen, with due credit for previous and continuous service in the Naval Reserve in the same manner and to the same effect as for equal length of service in the Naval Reserve Force: *Provided*, That no such enrolled person shall receive any back pay or allowances for any period during which he shall have received pay or allowances, or either, for service

in any other branch of the naval service, regular, or reserve. [39 Stat. L. 1174.]

This is from the Naval Appropriation Act of March 4, 1917, ch. 180.
For the Act of March 3, 1915, ch. 83, mentioned in the text, see 1914 Supp. Fed. Stat. Ann. 175; 6 Fed. Stat. Ann. (2d ed.) 1234.

An Act To increase the age limit for persons appointed as officers in the Naval Reserve.

[Act of April 25, 1917, ch. —, — Stat. L. —.]

[Naval Reserve Force — officers — age limit.] That the maximum limit of age for officers of the Naval Reserve of the Naval Reserve Force on first appointment as such therein be, and it is hereby increased from thirty-five to fifty years. [— Stat. L. —.]

An Act Making appropriations for the naval service for the fiscal year ending June thirtieth, nineteen hundred and nineteen, and for other purposes.

[Act of July 1, 1918, ch. —, — Stat. L. —.]

[Naval Militia — National Naval Volunteers — transfer to Naval Reserve Force or Marine Corps Reserve.] * * * That upon the approval of this Act all laws heretofore enacted by the Congress relating to the Naval Militia and the National Naval Volunteers be, and the same hereby are, repealed; and the President is authorized to transfer as a class all members of the National Naval Volunteers to the class "the Naval Reserve," "the Naval Reserve Flying Corps," or "the Marine Corps Reserve" of the Naval Reserve Force or the Marine Corps Reserve, for general service, in the confirmed rank, grade, or rating they now hold in the National Naval Volunteers, regardless of their being members of a State military force, and without examination and the necessity of executing or filing a new oath and acceptance of office; that until such transfer is effected members of the National Naval Volunteers shall retain their present status and be entitled to receive the same pay, allowances, gratuities, and other benefits as heretofore provided by law, and shall continue subject to the laws prescribed for the government of the Navy; that all members of the Naval Reserve Force shall be eligible for reenrollment in the rank, grade, or rating held on the termination of their last enrollment; that no enrollments or promotions shall be made in any rank or grade above that of lieutenant commander, except as herein otherwise provided. [— Stat. L. —.]

For provisions relating to the Naval Militia and the National Naval Volunteers, see MILITIA.

[Medical and Dental Reserve Corps — enrollment of members in Naval Reserve Force.] * * * That all laws heretofore enacted by Congress

relating to the Medical Reserve Corps, and Dental Reserve Corps be, and the same hereby are repealed: *Provided*, That members of the Medical Reserve Corps and Dental Reserve Corps may be enrolled in the Naval Reserve Force in their present grades and ranks. [— *Stat. L.* —.]

The Medical Reserve Corps was authorized by the Act of Aug. 22, 1912, ch. 335. See 6 Fed. Stat. Ann. (2d ed.) 1101.

The Dental Reserve Corps was authorized by the Naval Appropriation Act of Aug. 29, 1916, ch. 417, 39 Stat. L. 574, as follows:

"That a Navy Dental Reserve Corps is hereby authorized to be organized and operated under the provisions of the Act approved August twenty-second, nineteen hundred and twelve, providing for the organization and operation of a Navy Medical Reserve Corps, and differing therefrom in no respect other than that the qualification requirements of the appointees shall be dental surgeons and graduates of reputable schools of medicine or dentistry instead of "reputable schools of medicine," and so many said appointees may be ordered to temporary active service as the Secretary of the Navy may deem necessary to the health and efficiency of the personnel of the Navy and Marine Corps, provided the whole number of both Naval Dental Corps and Naval Dental Reserve Corps officers in active service shall not exceed in time of peace one to one thousand of the officers and enlisted men of the Navy and Marine Corps: *Provided*, That all officers now in the Navy Dental Reserve Corps shall be recommissioned in the Navy Dental Reserve Corps provided in this Act, in the order of their original appointment in said Corps, and hereafter when ordered to active duty officers of the Medical Reserve Corps and officers of the Dental Reserve Corps shall receive promotion in rank in the respective Reserve Corps under the same relative conditions and provisions of active service as is provided in this Act for the Naval Dental Corps."

[Ranks, grades and ratings — age limits.] That the age limits for the several ranks, grades, and ratings on first enrollment in the Naval Reserve shall be as prescribed by the Secretary of the Navy. [— *Stat. L.* —.]

[Minimum active service required.] That the minimum active service required for maintaining the efficiency of a member of the Naval Reserve shall be two months during each term of enrollment and an attendance at not less than thirty-six drills during each year, or other equivalent duty. The active service may be in one period or in periods of not less than fifteen days each. [— *Stat. L.* —.]

[Annual retainer pay — continuous service — retirement.] That the annual retainer pay of members of the Naval Reserve Force, except officers in the Naval Auxiliary Reserve and transferred members of the Fleet Naval Reserve, after confirmation in rank, grade, or rating, shall be the equivalent of two months' base pay of the corresponding rank, grade, or rating in the Navy, but the highest base pay upon which the retainer pay of officers of the Naval Reserve Force shall be computed, shall not be greater than the base pay of a lieutenant commander. Service in the Navy, Marine Corps, National Naval Volunteers, and Naval Militia shall be counted as continuous service in the Naval Reserve Force, both for the purpose of retirement and of computing retainer pay: *Provided*, That no member of the Naval Reserve Force shall be eligible for retirement other than for physical disability incurred in line of duty: *Provided further*, That no retainer pay of any member of the Naval Reserve Force except those enlisted men transferred to the Fleet Naval Reserve after sixteen or twenty or more years' naval service shall be in excess of the amount authorized to

members having had sixteen years' continuous service therein. [— *Stat. L.* —.]

The Army Appropriation Act of Aug. 29, 1916, ch. 417, 39 Stat. L. 591, provided as follows:

"The annual retainer pay of members in this class after confirmation in rank or rating shall be two months' base pay of the corresponding rank or rating in the Navy."

[Performance of duty afloat by members.] That in time of peace the Secretary of the Navy is authorized, in his discretion, to order any member of the Naval Reserve Force, with his consent, who has been confirmed in his rank, grade, or rating, to perform any duty afloat for any period of time for which his services may be required: *Provided*, That such members may be relieved from duty by the Secretary of the Navy at any time and shall upon their own application be released from said duty within four months from the date of their application therefor. [— *Stat. L.* —.]

[Clothing — gratuity — issuance.] That the uniform gratuity for the members, other than officers, of each class of the Naval Reserve Force shall be the same as that prescribed for enlisted men of the Navy, but in time of peace the Secretary of the Navy shall prescribe the portion of the clothing gratuity to be issued to such members, other than officers, of the Naval Reserve Force. [— *Stat. L.* —.]

[Retainer pay in time of peace.] That in time of peace no member of any class of the Naval Reserve Force shall be entitled to retainer pay when assigned to active duty for purposes other than training. [— *Stat. L.* —.]

[Clothing gratuity to members — deduction from their accounts.] That no part of the clothing gratuity credited to members of the Naval Reserve Force shall be deducted from their accounts where said members accept or have accepted temporary appointments in the Navy in time of war or other national emergency. [— *Stat. L.* —.]

[Disenrollment of members on account of age.] That members of the Naval Reserve Force shall upon reaching the age of sixty-four years be disenrolled except that in time of war or other national emergency such members of the Naval Reserve Force, if in active service, may be continued therein during such period as the Secretary of the Navy may determine, but not longer than six months after said war or other national emergency shall cease to exist. [— *Stat. L.* —.]

[Officers — promotions.] That no officer of any class of the Naval Reserve Force shall in time of peace be promoted above the grade of lieutenant commander, but in time of war or other national emergency officers of the Naval Reserve Force of and above the rank of lieutenant commander in active service shall be eligible for selection for promotion to the next higher grade or rank by the same board of officers that selects officers of the United States Navy for promotion to such higher ranks and grades, under the same rules and regulations as apply to the selection for promotion of officers of the United States Navy. The promotion of officers

of the Naval Reserve Force below the rank of lieutenant commander shall at all times be in accordance with such regulations as the Secretary of the Navy may prescribe. [— *Stat. L.* —.]

[Officers — precedence.] That when on active duty officers of the Naval Reserve Force shall take precedence among themselves and with other officers of the naval service in their respective grades or ranks according to the dates of their commissions or provisional assignment of rank in the Naval Reserve Force: *Provided*, That all officers of the Naval Reserve Force of and above the rank of lieutenant commander shall rank with but after officers of the same rank or grade in the United States Navy, except that in time of war or other national emergency such officers of the Naval Reserve Force shall have a date of precedence with officers of the United States Navy as of the date of general mobilization, to be established by the Secretary of the Navy: *Provided further*, That during the present emergency the date of precedence of all officers of the Naval Reserve Force shall be as prescribed by the Secretary of the Navy. [— *Stat. L.* —.]

[Pay and allowances — active service.] Members of the Naval Reserve Force when employed in active service, ashore or afloat, under the Navy Department shall receive the same pay and allowances as received by the officers and enlisted men of the Regular Navy of the same rank, grades, or ratings and of the same length of service, which shall include service in the Navy, Marine Corps, Naval Reserve Force, Naval Militia, National Naval Volunteers, or Marine Corps Reserve. [— *Stat. L.* —.]

[Laws, regulations and orders — wearing uniforms.] * * * Enrolled members of the Naval Reserve Force when in active service shall be subject to the laws, regulations, and orders for the government of the Regular Navy, and the Secretary of the Navy may, in his discretion, permit the members of the Naval Reserve Force to wear the uniform of their respective ranks, grades, or ratings while not in active service, and such members shall, for any act committed by them while wearing the uniform of their respective ranks, grades, or ratings, be subject to the laws, regulations, and orders for the government of the Regular Navy. [— *Stat. L.* —.]

IV. FLEET NAVAL RESERVE

[Fleet Naval Reserve — persons eligible for membership.] All former officers of the United States naval service, including midshipmen, who have left that service under honorable conditions, and those citizens of the United States who have been, or may be entitled to be, honorably discharged from the naval service after not less than one four-year term of enlistment or after a term of enlistment during minority, and who shall have enrolled in the Naval Reserve Force shall be eligible for membership in the Fleet Naval Reserve. [39 *Stat. L.* 589.]

The foregoing and the following nine paragraphs of the text are from the Naval Appropriation Act of Aug. 29, 1916, ch. 417.

[Transfer of enlisted men.] In addition to the enrollments in the Fleet Naval Reserve above provided, the Secretary of the Navy is authorized to transfer to the Fleet Naval Reserve at any time within his discretion any enlisted man of the naval service with twenty or more years' naval service, and any enlisted man, at the expiration of a term of enlistment who may be then entitled to an honorable discharge, after sixteen years' naval service: *Provided*, That such transfers shall only be made upon voluntary application and in the rating in which then serving, and the men so transferred shall be continued in the Fleet Naval Reserve until discharged by competent authority. [39 Stat. L. 589.]

See the note to the first paragraph of this Act, *supra*, p. 556.

[Assignment to active duty for training—travel allowance.] The Secretary of the Navy is authorized to assign any member of the Fleet Naval Reserve to active duty for training upon the application of such member, but any member who has failed to perform three months' active service with the Navy in any term of enrollment shall, on the next reenrollment, receive retainer pay at the rate of \$12 per annum until such time as he shall have completed three months' active service. The three months' active service with the Navy may be taken in one or more periods, at the election of the member: *Provided*, That no member shall be entitled to travel allowance unless the period of such active service is for not less than one month, or unless specifically provided for by such regulations as may be prescribed by the Secretary of the Navy. [39 Stat. L. 590 as amended by — Stat. L. —.]

See the note to the first paragraph of this Act, *supra*, p. 556.

As originally enacted the first clause of the first sentence of this paragraph was as follows: "The Secretary of the Navy is authorized to assign any member of the Fleet Naval Reserve to active duty for training on board ship, upon the application of such member." This clause was amended by the Act of April 15, 1917, ch. —, by striking therefrom the words "on board ship," causing it to read as here given.

[Retainer pay—enlistment period.] The retainer pay of the enrolled men of the Fleet Naval Reserve shall be the same as for the enrolled men of the Naval Reserve and shall be computed in like manner: *Provided*, That nothing herein shall operate to reduce the retainer pay allowed by existing law to enlisted men who, after sixteen years' or more naval service, are transferred to the Fleet Naval Reserve, nor to deny to such enlisted men their privilege of retirement upon completing thirty years' naval service as now provided by law: *Provided*, That for all purposes of this Act a complete enlistment during minority and any enlistment terminated within three months prior to the expiration of the term of enlistment by special order of the Secretary of the Navy shall be considered as four years' service. The annual retainer pay of officers of the Fleet Naval Reserve shall be two months' base pay of the corresponding rank in the Navy. [39 Stat. L. 590 as amended by — Stat. L. —.]

See the note to the first paragraph of this Act, *supra*, p. 556.

The provisions of this paragraph relating to retainer pay were amended to read as given in the text by the Naval Appropriation Act of July 1, 1918, ch. —. As originally enacted they were as follows:

"Men enrolled in the Fleet Naval Reserve with less than eight years' naval service shall be paid at the rate of \$50 per annum; those with eight or more years and less

An Act To provide for the disposition of the effects of deceased persons in the naval service.

[*Act of March 29, 1918, ch. —, — Stat. L. —.*]

[Deceased persons in naval service — disposition of effects.] That hereafter all moneys, articles of value, papers, keepsakes, and other similar effects belonging to deceased persons in the naval service, not claimed by their legal heirs or next of kin, shall be deposited in safe custody, and if any such moneys, articles of value, papers, keepsakes, or other similar effects so deposited have been, or shall hereafter be, unclaimed for a period of two years from the date of the death of such person, such articles and effects shall be sold and the proceeds thereof, together with the moneys above mentioned, shall be deposited in the Treasury to the credit of the Navy pension fund: *Provided*, That the Secretary of the Navy is hereby authorized and directed to make diligent inquiry in every instance after the death of such person to ascertain the whereabouts of his heirs or next of kin, and to prescribe such regulations as may be necessary to carry out the foregoing provisions: *Provided further*, That claims may be presented hereunder at any time within five years after such moneys or proceeds have been so deposited in the Treasury, and, when supported by competent proof in any case after such deposit in the Treasury, shall be certified to Congress for consideration. [*— Stat. L. —.*]

An Act To authorize the President to drop from the rolls any naval or Marine Corps officer absent without leave for three months, or who has been convicted of any offense punishable by confinement in the penitentiary by the civil authorities, and prohibiting such officer's reappointment.

[*Act of April 2, 1918, ch. —, — Stat. L. —.*]

[Naval or marine corps officers — dropping from rolls by President — reappointment.] That the President is hereby authorized to drop from the rolls of the Navy or Marine Corps any officer thereof who is absent from duty without leave for a period of three months or more, or who, having been found guilty by the civil authorities of any offense, is finally sentenced to confinement in a State or Federal penitentiary: *Provided*, That no officer so dropped shall be eligible for reappointment. [*— Stat. L. —.*]

An Act To regulate the pay of retired chief warrant officers and warrant officers on active duty.

[*Act of April 10, 1918, ch. —, — Stat. L. —.*]

[SEC. 1.] [Retired chief warrant officers — pay — active duty.] That any retired chief warrant officer who has been on active duty since August twenty-ninth, nineteen hundred and sixteen, or who may hereafter perform active duty, and whose record is creditable, shall, during such time

as he has been or may hereafter be, on active duty, and from the time his service on the active list after date of commission, plus his service on active duty while on the retired list, is equal to six years, receive the pay and allowances that are now, or may hereafter be, allowed a lieutenant (junior grade), United States Navy; and shall, during such time as he has been, or may hereafter be, on active duty, and from the time such total service is equal to twelve years, receive the pay and allowances that are now, or may hereafter be, allowed a lieutenant, United States Navy. [— *Stat. L.* —.]

SEC. 2. [Retired warrant officers — pay — active duty.] That any retired warrant officer who has been on active duty since August twenty-ninth, nineteen hundred and sixteen, or who may hereafter perform active duty, and whose record is creditable, shall, during such time as he has been or may hereafter be on active duty, and from the time his service on the active list after date of warrant, plus his service on active duty while on the retired list, is equal to twelve years, receive the pay and allowances that are now or may hereafter be allowed a lieutenant (junior grade), United States Navy; and shall, during such time as he has been or may hereafter be on active duty, and from the time such total service is equal to eighteen years, receive the pay and allowances that are now or may hereafter be allowed a lieutenant, United States Navy. [— *Stat. L.* —.]

An Act To authorize the Secretary of the Navy to increase the facilities for the proof and test of ordnance material, and for other purposes.

[*Act of April 26, 1918, ch. —, — Stat. L. —.*]

[Proof and test of ordnance material — increased facilities — acquisition by government — procedure.] That the Secretary of the Navy is hereby authorized to expend the sum of \$1,000,000, or any part thereof, in his discretion, for the purpose of increasing the facilities for the proof and test of ordnance material, including necessary buildings, construction, equipment, railroad, and water facilities, land, and damages and losses to persons, firms, and corporations resulting from the procurement of the land for this purpose, and also all necessary expenses incident to the procurement of said land: *Provided*, That if such lands and appurtenances and improvements attached thereto, can not be procured by purchase within one month after the passage of this Act the President is hereby authorized and empowered to take over for the United States the immediate possession and title of such lands and improvements, including all easements, rights of way, riparian, and other rights appurtenant thereto, or any land selected by him to be used for the carrying out of the purposes of this Act. That if said land and appurtenances and improvements shall be taken over as aforesaid, the United States shall make just compensation therefor, to be determined by the President, and if the amount thereof so determined by the President is unsatisfactory to the person entitled to receive the same, such person shall be paid seventy-five per centum of the amount so determined by the President and shall be entitled

than twelve years' naval service shall be paid at the rate of \$72 per annum; and those with twelve or more years' naval service shall be paid at the rate of \$100 per annum, such pay to be considered as retainer pay for the obligation on the part of such members to serve in the Navy in time of war or national emergency."

[Reenrollments — retainer pay — reenlistment in regular service — retainer pay.] Reenrollments in the Fleet Naval Reserve shall be for four years. Officers and men enrolling in the Fleet Naval Reserve within four months of the date of the termination of their last naval service or reenrolling within four months of the date of the termination of their last term of enrollment shall receive an increase of twenty-five per centum of their retainer pay for each such enrollment: *Provided*, That men who have enrolled in the Fleet Naval Reserve within four months of the date of their discharge from the regular naval service shall, upon reenlistment in the regular naval service within four months of the date of discharge from the Fleet Naval Reserve, be entitled to the same gratuity and additional pay as if they had reenlisted in the regular naval service within four months of discharge therefrom. [39 Stat. L. 590.]

See the note to the first paragraph of this Act, *supra*, p. 556.

[Longevity increase of retainer pay — heroism or good conduct — credit.] Members of the Fleet Naval Reserve who have, when transferred to the Fleet Naval Reserve, completed naval service of sixteen or twenty or more years shall be paid a retainer at the rate of one-third and one-half, respectively, of the base pay they were receiving at the close of their last naval service plus all permanent additions thereto: *Provided*, That the pay authorized in this paragraph as a retainer shall be increased ten per centum for all men who may be credited with extraordinary heroism in the line of duty or whose average marks in conduct for twenty years or more shall not be less than ninety-five per centum of the maximum. [39 Stat. L. 590.]

See the note to the first paragraph of this Act, *supra*, p. 556.

[Forfeiture of pay.] Any pay which may be due any member of the Fleet Naval Reserve shall be forfeited when so ordered by the Secretary of the Navy upon the failure, under such conditions as may be prescribed by the Secretary of the Navy, of such man to report for inspection. [39 Stat. L. 590.]

See the note to the first paragraph of this Act, *supra*, p. 556.

[Issue of warrants or commissions.] Members of the Fleet Naval Reserve who have established their qualifications by examination to the satisfaction of the Secretary of the Navy may be given warrants or commissions in the Fleet Naval Reserve in the grades of boatswain, gunner, carpenter, machinist, pharmacist, pay clerk, ensign for deck or engineering duties, or in the lowest grades of the staff corps: *Provided further*, That those so warranted or commissioned shall not be deprived of the retainer pay, allowances, or gratuities to which they would be otherwise entitled. [39 Stat. L. 590.]

See the note to the first paragraph of this Act, *supra*, p. 556.

[Amendments as reducing pay and allowances of officers and enlisted men.] That nothing contained in the preceding amendments of the Act of May twenty-second, nineteen hundred and seventeen, shall be construed to reduce the pay or allowances now authorized by law for any commissioned, warrant, or appointed officer or any enlisted man of the active or retired lists of the Navy. [— *Stat. L.* —.]

The amendments of the Act of May 22, 1917, ch. —, are incorporated therein, *supra*, p. 523, and *infra*, p. 568.

[Retired officers—war or national emergency—active duty—promotion—pay and allowances.] That hereafter, during the existence of war or of a national emergency declared by the President to exist, any commissioned or warrant officer of the Navy, Marine Corps, or Coast Guard of the United States on the retired list may, in the discretion of the Secretary of the Navy, be ordered to active duty at sea or on shore; and any retired officer performing such active duty in time of war or national emergency, declared as aforesaid, shall be entitled to promotion on the retired list to the grade or rank, not above that of lieutenant commander in the Navy or major in the Marine Corps or captain in the Coast Guard, and shall thereafter receive the pay and allowances thereof, which his total active service as an officer both prior and subsequent to retirement, in the manner rendered by him, would have enabled him to attain in due course of promotion had such service been rendered continuously on the active list during the period of time last past.

That during the existence of war or of a national emergency, declared as aforesaid, any commissioned or warrant officer of the Navy, Marine Corps or Coast Guard of the United States on the retired list, while on active duty, may be temporarily advanced to and commissioned in such higher grade or rank on the retired list, not above that of lieutenant commander in the Navy or major in the Marine Corps or captain in the Coast Guard, as the President may determine, and any officer so advanced shall, while on active duty, be entitled to the same pay and allowances as officers of like grade or rank on the active list: *Provided*, That any such commissioned or warrant officer who has been so temporarily advanced in grade or rank shall, upon his relief from active duty, or in any case not later than six months after the termination of the war or of the national emergency, declared as aforesaid, revert to the grade or rank on the retired list and to the pay and allowance status which he would have held had he not been so temporarily advanced: *Provided further*, That nothing in this Act shall operate to reduce the pay and allowances now allowed by law to retired officers. [— *Stat. L.* —.]

[Promotions by selection—advancement to ranks of commander, captain and rear admiral.] The provisions of existing laws with reference to promotion by selection in the line of the Navy are hereby extended to include and authorize advancement to the ranks of commander, captain, and rear admiral in the Staff Corps of the Navy under the same conditions in all respects except as may be necessary to adapt the said provisions to such Staff Corps: *Provided*, That boards of selection shall in each case be composed, when practicable, of not less than five members of the corps

[Reenrollment — increased pay — retirement — cash gratuity.] Members of the Naval Reserve Force who reenroll for a term of four years within four months from the date of the termination of their last term of enrollment, and who shall have performed the minimum amount of active service required during the preceding term of enrollment, shall, for each such reenrollment, receive an increase of twenty-five per centum of their base retainer pay: *Provided*, That enrolled members who shall have completed twenty years of service in the Naval Reserve Force, and who shall have performed the minimum amount of active service required in their class for maintaining efficiency during each term of enrollment, shall, upon their own application, be retired with the rank or rating held by them at the time, and shall receive in lieu of any pay, a cash gratuity equal to the total amount of their retainer pay during the last term of their enrollment. [39 Stat. L. 588.]

[Payment of retainer pay.] Retainer pay shall be paid annually or at shorter intervals, as the Secretary of the Navy, in his discretion, may direct. [39 Stat. L. 588.]

[Other public service.] No existing law shall be construed to prevent any member of the Naval Reserve Force from accepting employment in any branch of the public service, except as an officer or enlisted man in any branch of the military service of the United States or any State thereof, nor from receiving the pay and allowances incident to such employment in addition to his retainer pay. [39 Stat. L. 588.]

[Application of Navy laws — badge or button — unauthorized use.] Enrolled members of the Naval Reserve Force shall be subject to the laws, regulations, and orders for the government of the Regular Navy only during such time as they may by law be required to serve in the Navy, in accordance with their obligations, and when on active service at their own request as herein provided, and when employed in authorized travel to and from such active service in the Navy. Members of the Naval Reserve Force shall be issued a distinctive badge or button which may be worn with civilian dress, and whoever, not being a member of the Naval Reserve Force of the United States and not entitled under the law to wear the same, willfully wears or uses the badge or button or who uses or wears the same to obtain aid or assistance thereby, shall be punished by a fine of not more than \$20 or by imprisonment for not more than thirty days or by both such fine and imprisonment. [39 Stat. L. 588.]

[Active service — pay — not in active service.] All members of the Naval Reserve Force shall, when actively employed as set forth in this Act, be entitled to the same pay, allowances, gratuities, and other emoluments as officers and enlisted men of the naval service on active duty of corresponding rank or rating and of the same length of service. When not actively employed in the Navy, members of the Naval Reserve Force shall not be entitled to any pay, bounty, gratuity, or pension except as expressly provided for members of the Naval Reserve Force by the provisions of this Act. [39 Stat. L. 588.]

[Service in time of war.] Enrolled members of the Naval Reserve Force may, in time of war or national emergency, be required to perform active service in the Navy throughout the war or until the national emergency ceases to exist. [39 Stat. L. 588.]

[Uniform gratuity for training — for service in time of war — deduction on withdrawal.] Members of the Naval Reserve Force shall, upon first reporting for active service for training during each period of enrollment, be credited with a uniform gratuity of \$50 for officers and of \$30 for men.

Upon reporting for active service in time of war or national emergency the uniform gratuity shall be \$150 for officers and \$60 for men, or the difference between these amounts and any amounts that may have been credited as a uniform gratuity during the current enrollment: *Provided*, That should any member of the Naval Reserve Force sever his connection with the service without compulsion on part of the Government before the expiration of his term of enrollment, the amount so credited shall be deducted from any money that may be or may become due him. [39 Stat. L. 589.]

[Auxiliary vessels — preference to Reserve Force.] Hereafter, in shipping officers and men for service on board United States auxiliary vessels, preference shall be given to members of the Naval Reserve Force, and, after two years from the date of approval of this Act, no person shall be shipped for such service who is not a member of the Naval Reserve Force herein provided. [39 Stat. L. 589.]

[Transfer of members to other classes.] Members of the Naval Reserve Force may, upon application, be transferred from one class to another class for which qualified under the provisions of this Act; and may in time of war volunteer for and be assigned to duties prescribed for any class which they may be deemed competent to perform. [39 Stat. L. 589.]

[Flag or pennant.] The Secretary of the Navy shall prescribe a suitable flag, or pennant, that may be flown as an insignia on private vessels or vessels of the merchant service commanded by officers of the Naval Reserve Force: *Provided*, That it shall not be flown in lieu of the National ensign. [39 Stat. L. 589.]

[Schools for instruction — admissions — certificates on completing course.] * * * The Secretary of the Navy is hereby authorized to establish schools or camps of instruction at such times and in such localities as he may deem advisable for the purpose of instructing members and applicants for membership in the Naval Reserve Force. No applicant shall be accepted for instruction unless he agrees to abide by the regulations of the school and pursue the course prescribed by the Secretary of the Navy. Persons who satisfactorily complete the course will be given certificates of qualification for the rank or rating for which duly qualified, and may be permitted to enroll in the proper class of the reserve in such rank or rating. For the purpose of carrying into effect this paragraph of the Act there is

hereby appropriated, out of any money in the Treasury not otherwise appropriated, \$30,000, which is hereby made available to be expended as the Secretary of the Navy may direct in the necessary equipment and maintenance of such schools and camps. [39 Stat. L. 589.]

[Qualifications for enlistment in.] Members of the Naval Reserve Force who have enrolled for general service and are citizens of the United States are eligible for membership in the Naval Reserve. No person shall be enrolled in or transferred to this class unless he establishes satisfactory evidence as to his qualifications for duty on board combatant ships of the Navy. [39 Stat. L. 591 as amended by — Stat. L. —.]

This paragraph was amended to read as here given by the Naval Appropriation Act of July 1, 1918, ch. —. As originally enacted it was as follows:

"Members of the Naval Reserve Force who have been or may be engaged in the seagoing profession, and who have enrolled for general service, shall be eligible for membership in the Naval Reserve. No person shall be first enrolled in this class who is less than eighteen or more than thirty-five years of age, nor unless he furnishes satisfactory evidence as to his ability and character; nor shall any person be appointed an officer in this class unless he shall have had not less than two years' experience as an officer on board of lake or ocean going vessels."

[Service for rank — service during term.] The minimum active service required of members to qualify for confirmation in their rank or rating in this class shall be three months.

The minimum active service required for maintaining the efficiency of a member of this class is three months during each term of enrollment. This active service may be in one period or in periods of not less than three weeks each year. [39 Stat. L. 591.]

[United States Naval Reserve — continuous service pay — reenlistments — back pay or allowances.] * * * Any former member of class one of the United States Naval Reserve, established by the Act of March third, nineteen hundred and fifteen, "An Act making appropriations for the naval service for the fiscal year ending June thirtieth, nineteen hundred and sixteen, and for other purposes," who shall have reenlisted in the Navy prior to May first, nineteen hundred and seventeen, shall be held and considered to have reenlisted within four months from the date of discharge from the Navy for the purpose of continuous-service pay. And any such member of the said Naval Reserve who was serving therein on August twenty-ninth, nineteen hundred and sixteen, shall upon his application therefor, any time prior to July first, nineteen hundred and seventeen, be enrolled in the Naval Reserve Force, and any such person so enrolled shall, for all purposes, be considered as having served continuously in such Naval Reserve Force since August twenty-ninth, nineteen hundred and sixteen, with due credit for previous and continuous service in the Naval Reserve in the same manner and to the same effect as for equal length of service in the Naval Reserve Force: *Provided*, That no such enrolled person shall receive any back pay or allowances for any period during which he shall have received pay or allowances, or either, for service

in any other branch of the naval service, regular or reserve. [39 Stat. L. 1174.]

This is from the Naval Appropriation Act of March 4, 1917, ch. 180.

For the Act of March 3, 1915, ch. 83, mentioned in the text, see 1914 Supp. Fed. Stat. Ann. 175; 6 Fed. Stat. Ann. (2d ed.) 1234.

An Act To increase the age limit for persons appointed as officers in the Naval Reserve.

[Act of April 25, 1917, ch. —, — Stat. L. —.]

[Naval Reserve Force — officers — age limit.] That the maximum limit of age for officers of the Naval Reserve of the Naval Reserve Force on first appointment as such therein be, and it is hereby increased from thirty-five to fifty years. [— Stat. L. —.]

An Act Making appropriations for the naval service for the fiscal year ending June thirtieth, nineteen hundred and nineteen, and for other purposes.

[Act of July 1, 1918, ch. —, — Stat. L. —.]

[Naval Militia — National Naval Volunteers — transfer to Naval Reserve Force or Marine Corps Reserve.] * * * That upon the approval of this Act all laws heretofore enacted by the Congress relating to the Naval Militia and the National Naval Volunteers be, and the same hereby are, repealed; and the President is authorized to transfer as a class all members of the National Naval Volunteers to the class "the Naval Reserve," "the Naval Reserve Flying Corps," or "the Marine Corps Reserve" of the Naval Reserve Force or the Marine Corps Reserve, for general service, in the confirmed rank, grade, or rating they now hold in the National Naval Volunteers, regardless of their being members of a State military force, and without examination and the necessity of executing or filing a new oath and acceptance of office; that until such transfer is effected members of the National Naval Volunteers shall retain their present status and be entitled to receive the same pay, allowances, gratuities, and other benefits as heretofore provided by law, and shall continue subject to the laws prescribed for the government of the Navy; that all members of the Naval Reserve Force shall be eligible for reenrollment in the rank, grade, or rating held on the termination of their last enrollment; that no enrollments or promotions shall be made in any rank or grade above that of lieutenant commander, except as herein otherwise provided. [— Stat. L. —.]

For provisions relating to the Naval Militia and the National Naval Volunteers, see MILITIA.

[Medical and Dental Reserve Corps — enrollment of members in Naval Reserve Force.] * * * That all laws heretofore enacted by Congress

ments shall be for a probationary period of three years and may be revoked at any time by the Secretary of the Navy.

Such acting ensigns and acting second lieutenants shall be detailed to duty in the Naval Flying Corps in aircraft involving actual flying.

Such acting ensigns of the Navy and acting second lieutenants of the Marine Corps shall, upon completion of the probationary period of three years, be appointed acting lieutenants of the junior grade, or acting first lieutenants, respectively, by the Secretary of the Navy for the performance of aeronautic duties only, after satisfactorily passing such examinations as he may prescribe, and after having been recommended for promotion by the examining board and found physically qualified by a board of medical officers of the Navy. Such appointments shall be for a probationary period of four years and may be revoked at any time by the Secretary of the Navy.

Such acting lieutenants (junior grade) and acting first lieutenants may elect to qualify for aeronautic duty only or to qualify for all the duties of officers of the same grade in the Navy and in the Marine Corps, respectively. Those officers who elect to qualify for aeronautic duty only shall be detailed to duty in the Naval Flying Corps involving actual flying in aircraft. Those officers who elect to qualify for the regular duties of their grade shall be detailed to duty in the regular service for at least two years to allow them to prepare for such qualification. [39 Stat. L. 583.]

[Commissions for aeronautic duty.] Such acting lieutenants (junior grade) and acting first lieutenants who have elected to qualify for aeronautic duty only shall, upon completion of the probationary period of four years, be commissioned in the grade of lieutenant of the line of the Navy or captain of the Marine Corps for aeronautic duties only, after satisfactorily passing such competitive examination as may be prescribed by the Secretary of the Navy to determine their moral, physical, and professional qualifications for such commissions and the order of rank in which they shall be commissioned. Such lieutenants for aeronautic duty only shall be borne on the list as extra numbers, taking rank with and next after officers of the same date of commission. [39 Stat. L. 583.]

[Commissions for line duty.] Such acting lieutenants (junior grade) and acting first lieutenants who have elected to qualify for the regular duties of the line of the Navy and of the Marine Corps, respectively, shall, upon completion of the probationary period of four years, two years of which shall have been on such regular duties, be commissioned in the grade of the line of the Navy or Marine Corps according to his length of service, after passing satisfactorily such competitive examinations as may be prescribed by the Secretary of the Navy to determine their moral, physical, and professional qualifications for such commissions and to determine the order of rank in which they shall be commissioned. Such officers of the line of the Navy and Marine Corps will be borne upon the lists of their respective corps as extra numbers, taking rank with and next after officers of the regular services of the same date of commissions. [39 Stat. L. 584.]

[Transfers to Reserve Flying Corps — discharge.] Acting lieutenants (junior grade) of the line of the Navy for aeronautic duties only and act-

ing first lieutenants of the Marine Corps for aeronautic duty only who have completed the probationary period of four years may, upon examination for commissions to the next higher grade, if recommended by the board of examination, be transferred to the Naval Reserve Flying Corps and commissioned in the same grade or the next higher grade as may be recommended in accordance with their qualifications as determined by the examination: *Provided*, That at any time during such probationary period any such officer can, upon his own request, if his record warrants it, be transferred to the Naval Reserve Flying Corps and commissioned in the acting grade he then holds. Any officer of the Naval Flying Corps holding an appointment of student flyer or acting ensign, second lieutenant, lieutenant (junior grade), or first lieutenant, who, upon examination for promotion, is found not qualified shall, if not recommended by the examining board for transfer to the Naval Reserve Flying Corps, be honorably discharged from the naval service. [39 Stat. L. 584.]

[Promotion of officers for aeronautic duty only.] Officers commissioned for aeronautic duty only shall be eligible for advancement to the higher grades, not above captain in the Navy or colonel in the Marine Corps, in the same manner as other officers whose employment is not so restricted, except that they shall be eligible to promotion without restriction as to sea duty, and their professional examinations shall be restricted to the duty to which personally assigned: *Provided*, That any such officer must serve at least three years in any grade before being eligible to promotion to the next higher grade. [39 Stat. L. 584.]

[Detail from other branches as student aviators or airmen — pay and allowances.] Nothing in this Act shall be so construed as to prevent the detail of officers and enlisted men of other branches of the Navy as student aviators or student airmen in such numbers as the needs of the service may require.

Such officers and enlisted men, while detailed as student aviators and student airmen involving actually flying in aircraft, shall receive the same pay and allowances that are now provided by law for officers and enlisted men of the same grade or rank and rating in the Navy detailed for duty with aircraft. [39 Stat. L. 584.]

[Student flyers from enlisted men or civil life — pay and allowances — term of appointment — revocation or transfer.] The Secretary of the Navy is hereby authorized to appoint annually for a period of four years, from enlisted men of the naval service, or from citizens of the United States in civil life, not to exceed thirty student flyers for instruction and training in aeronautics who shall receive the same pay and allowances as midshipmen at the United States Naval Academy: *Provided*, That persons so appointed must, at the time of appointment, be not less than seventeen or more than twenty-one years of age: *Provided further*, That no person shall be appointed a student flyer until he shall have qualified therefor by such examination as may be prescribed by the Secretary of the Navy.

The appointment of student flyers shall continue in force for two years, unless sooner revoked by the Secretary of the Navy, in his discretion, and

at the end of such period student flyers shall be examined for qualification as qualified aviators: *Provided*, That if such student flyers are not qualified, their appointment will be revoked, or, if recommended by the examining board, they shall be transferred to the Naval Reserve Flying Corps and commissioned as ensigns therein. [39 Stat. L. 584.]

[Qualified aviators — rank and pay — promotion — transfer.] Student flyers shall, after receiving a certificate of qualification as an aviator for actual flying in aircraft, rank with midshipmen and shall receive the same pay and allowances as midshipmen, plus fifty per centum thereof: *Provided*, That student flyers who have qualified as aviators under the provisions of this Act shall be commissioned acting ensigns for aeronautic duties only, after three years' service: *Provided further*, That they shall have been examined by a board of officers of the Naval Flying Corps to determine by a competitive examination prescribed by the Secretary of the Navy their moral, physical, and professional fitness and the order of rank in which they shall be commissioned: *And provided further*, That any student flyer qualified as an aviator may at any time, in the discretion of the Secretary of the Navy, if his record warrants it, at his own request, be transferred to the Naval Reserve Flying Corps and be commissioned as ensign therein: *And provided further*, That student flyers not considered qualified for commission as acting ensigns for aeronautic duties only may, upon recommendation of the examining board, be transferred to the Naval Reserve Flying Corps and be commissioned as ensigns therein. [39 Stat. L. 585.]

[Aeronautic training schools authorized.] The Secretary of the Navy is hereby authorized to establish aeronautic schools for the instruction and training of student flyers and prescribe the course of instruction and qualifications for certificate of graduation as a qualified aviator. [39 Stat. L. 585.]

[Temporary detail for aircraft duty.] Nothing in this or any other Act shall be so construed as to prevent the temporary detail of officers and enlisted men of any branch of the Navy for duty with aircraft. [39 Stat. L. 585.]

[Aviation accidents — gratuity for death from — pensions for death or disability.] In the event of the death of an officer or enlisted man or student flyer of the Naval Flying Corps from wounds or disease, the result of an aviation accident, not the result of his own misconduct, received while engaged in actual flying in or in handling aircraft, the gratuity to be paid under the provisions of the Act approved August twenty-second, nineteen hundred and twelve, entitled "An Act making appropriations for the naval service for the fiscal year ending June thirtieth, nineteen hundred and thirteen, and for other purposes," shall be an amount equal to one year's pay at the rate received by such officer or enlisted man or student flyer at the time of the accident resulting in his death. In all cases where an officer or enlisted man or student flyer of the Navy or Marine Corps dies, or where a student flyer or an enlisted man of the Navy or

Marine Corps is disabled by reason of any injury received or disease contracted in line of duty, the result of an aviation accident, received while employed in actual flying in or in handling aircraft, the amount of pension allowed shall be double that authorized to be paid should death or the disability have occurred by reason of an injury received or disease contracted in line of duty not the result of an aviation accident. [39 Stat. L. 585.]

For the Act of Aug. 22, 1912, ch. 335, mentioned in the text, see 1914 Supp. Fed. Stat. Ann. 290. Said Act was an amendment of the Act of May 13, 1908, ch. 166. See 6 Fed. Stat. Ann. (2d ed.) 1210.

[Application of Navy laws, etc.—retirement or retired pay.] Student flyers and the acting ensigns and acting lieutenants (junior grade) and acting second and first lieutenants for aeronautic duties only provided for herein shall be subject to the laws and regulations and orders for the government of the Navy, but shall not be entitled to retirement or retired pay. [39 Stat. L. 585.]

[Ratings of enlisted men.] The enlisted personnel of the Naval Flying Corps shall be distributed by the Secretary of the Navy in the various ratings as now obtained in the Navy in so far as such ratings are applicable to duties connected with aircraft. [39 Stat. L. 585.]

[Transfer of enlisted men.] Within the first two years after the approval of this Act enlisted men may be transferred from other branches of the Naval Service to the Naval Flying Corps, under regulations established by the Secretary of the Navy governing such transfer and the qualifications for this corps: *Provided*, That the number so transferred shall not exceed one-half the total number of enlisted men allowed by this Act. [39 Stat. L. 586.]

[Regulations.] The Secretary of the Navy shall establish regulations governing the term of enlistment, the qualifications, and advancement of the enlisted men of the Flying Corps. [39 Stat. L. 586.]

[Appointment of enlisted men as student flyers.] Any enlisted man who passes satisfactorily the prescribed examination and is recommended by a board of officers may be appointed a student flyer as herein provided. [39 Stat. L. 586.]

III. NAVAL RESERVE

An Act Making appropriations for the naval service for the fiscal year ending June thirtieth, nineteen hundred and seventeen, and for other purposes.

[Act of Aug. 29, 1916, ch. 417, 39 Stat. L. 556.]

NAVAL RESERVE FORCE

[Creation of Naval Reserve Force — classes — composition — aliens — naturalization.] There is hereby established, under the Department of

the Navy, a Naval Reserve Force, to consist of six classes, designated as follows and as hereinafter described:

First. The Fleet Naval Reserve.

Second. The Naval Reserve.

Third. The Naval Auxiliary Reserve.

Fourth. The Naval Coast Defense Reserve.

Fifth. The Volunteer Naval Reserve.

Sixth. Naval Reserve Flying Corps.

The Naval Reserve Force shall be composed of citizens of the United States who, by enrolling under regulations prescribed by the Secretary of the Navy or by transfer thereto as in this Act provided, obligate themselves to serve in the Navy in time of war or during the existence of a national emergency, declared by the President: *Provided*, That citizens of the insular possessions of the United States may enroll in the Naval Auxiliary Reserve: *Provided further*, That such persons who are not citizens of the United States, but who have or shall have declared their intention to become citizens of the United States, and who are citizens of countries which are at peace with the United States, may enroll in the Naval Reserve Force subject to the condition that they may be discharged from such enrollment at any time within the discretion of the Secretary of the Navy, and such persons who may, under existing law, become citizens of the United States, and who render honorable service in the Naval Reserve Force in time of war for a period of not less than one year may become citizens of the United States without proof of residence on shore and without further requirement than proof of good moral character and certificate from the Secretary of the Navy that such honorable service was actually rendered. [39 Stat. L. 587 as amended by — Stat. L. —.]

The foregoing paragraph and the following nineteen paragraphs of the text are from the Naval Appropriation Act of Aug. 29, 1916, ch. 417, cited above.

This paragraph was amended to read as here given by the Act of May 22, 1917, ch. —, the amendment consisting of the addition of the second proviso beginning with the words "*Provided further*" to the end of the text.

[**Regulations.**] The Secretary of the Navy shall make all necessary and proper regulations not inconsistent with law for the administration of the provisions of this Act which relate to the Naval Reserve Force. [39 Stat. L. 587.]

[**Order for active service.**] Members of the Naval Reserve Force may be ordered into active service in the Navy by the President in time of war or when, in his opinion, a national emergency exists. [39 Stat. L. 587.]

[**Ranks, grades, etc.**] There shall be allowed in the Naval Reserve Force the various ratings, grades, and ranks, not above the rank of lieutenant commander, corresponding to those in the Navy. Officers of the line may be appointed for deck or engineering duties, as they may elect. [39 Stat. L. 587.]

[**Commissions — warrants — retainer pay, etc. — rank of officers.**] Members of the Naval Reserve Force appointed to commissioned grades shall be commissioned by the President alone, and members of such force

appointed to warrant grades shall be warranted by the Secretary of the Navy: *Provided*, That officers so warranted or commissioned shall not be deprived of the retainer pay, allowances, or gratuities to which they would otherwise be entitled. Officers of the Naval Reserve Force shall rank with but after officers of corresponding rank in the Navy. [39 Stat. L. 587.]

[Term of service — oath of allegiance.] Enrollment and reenrollment shall be for terms of four years, but members shall in time of peace, when no national emergency exists, be discharged upon their own request upon reimbursing the Government for any clothing gratuity that may have been furnished them during their current enrollment.

Persons enrolling shall be required to take the oath of allegiance to the United States. [39 Stat. L. 587.]

[Provisional grade, etc.— instruction service — confirmation of grade.] When first enrolled members of the Naval Reserve Force, except those in the Fleet Naval Reserve, shall be given a provisional grade, rank or rating in accordance with their qualifications determined by examination. They may thereafter, upon application, be assigned to active service in the Navy for such periods of instruction and training as may enable them to qualify for and be confirmed in such grade, rank or rating.

No member shall be confirmed in his provisional grade, rank or rating until he shall have performed the minimum amount of active service required for the class in which he is enrolled, nor until he has duly qualified by examination for such rank or rating under regulations prescribed by the Secretary of the Navy. [39 Stat. L. 587.]

[Examinations, etc., of officers.] No person shall be appointed or commissioned as an officer in any rank in any class of the Naval Reserve Force, or promoted to a higher rank therein, unless he shall have been examined and recommended for such appointment, commission, or promotion by a board of three naval officers not below the rank of lieutenant commander, nor until he shall have been found physically qualified by a board of medical officers to perform the duties required in time of war, except that former officers and midshipmen of the Navy, who shall have left the service under honorable conditions and who shall have enrolled in the Naval Reserve Force, may be appointed in the grade and rank last held by them without examination other than the physical examination above prescribed. [39 Stat. L. 587.]

[Retainer pay.] The retainer pay of all members of the Naval Reserve Force, except the Volunteer Naval Reserve, while enrolled in a provisional rank or rating, and until such time as they shall have been confirmed in such rank or rating, shall be \$12 per annum. Thereafter, the retainer pay shall be that prescribed for members in the various classes.

Retainer pay shall be in addition to any pay to which a member may be entitled by reason of active service.

Retainer pay shall only be paid to members of the Naval Reserve Force upon their making such reports concerning their movements and occupations as may be required by the Secretary of the Navy. [39 Stat. L. 588.]

[Reenrollment — increased pay — retirement — cash gratuity.] Members of the Naval Reserve Force who reenroll for a term of four years within four months from the date of the termination of their last term of enrollment, and who shall have performed the minimum amount of active service required during the preceding term of enrollment, shall, for each such reenrollment, receive an increase of twenty-five per centum of their base retainer pay: *Provided*, That enrolled members who shall have completed twenty years of service in the Naval Reserve Force, and who shall have performed the minimum amount of active service required in their class for maintaining efficiency during each term of enrollment, shall, upon their own application, be retired with the rank or rating held by them at the time, and shall receive in lieu of any pay, a cash gratuity equal to the total amount of their retainer pay during the last term of their enrollment. [39 Stat. L. 588.]

[Payment of retainer pay.] Retainer pay shall be paid annually or at shorter intervals, as the Secretary of the Navy, in his discretion, may direct. [39 Stat. L. 588.]

[Other public service.] No existing law shall be construed to prevent any member of the Naval Reserve Force from accepting employment in any branch of the public service, except as an officer or enlisted man in any branch of the military service of the United States or any State thereof, nor from receiving the pay and allowances incident to such employment in addition to his retainer pay. [39 Stat. L. 588.]

[Application of Navy laws — badge or button — unauthorized use.] Enrolled members of the Naval Reserve Force shall be subject to the laws, regulations, and orders for the government of the Regular Navy only during such time as they may by law be required to serve in the Navy, in accordance with their obligations, and when on active service at their own request as herein provided, and when employed in authorized travel to and from such active service in the Navy. Members of the Naval Reserve Force shall be issued a distinctive badge or button which may be worn with civilian dress, and whoever, not being a member of the Naval Reserve Force of the United States and not entitled under the law to wear the same, willfully wears or uses the badge or button or who uses or wears the same to obtain aid or assistance thereby, shall be punished by a fine of not more than \$20 or by imprisonment for not more than thirty days or by both such fine and imprisonment. [39 Stat. L. 588.]

[Active service — pay — not in active service.] All members of the Naval Reserve Force shall, when actively employed as set forth in this Act, be entitled to the same pay, allowances, gratuities, and other emoluments as officers and enlisted men of the naval service on active duty of corresponding rank or rating and of the same length of service. When not actively employed in the Navy, members of the Naval Reserve Force shall not be entitled to any pay, bounty, gratuity, or pension except as expressly provided for members of the Naval Reserve Force by the provisions of this Act. [39 Stat. L. 588.]

[Service in time of war.] Enrolled members of the Naval Reserve Force may, in time of war or national emergency, be required to perform active service in the Navy throughout the war or until the national emergency ceases to exist. [39 Stat. L. 588.]

[Uniform gratuity for training — for service in time of war — deduction on withdrawal.] Members of the Naval Reserve Force shall, upon first reporting for active service for training during each period of enrollment, be credited with a uniform gratuity of \$50 for officers and of \$30 for men.

Upon reporting for active service in time of war or national emergency the uniform gratuity shall be \$150 for officers and \$60 for men, or the difference between these amounts and any amounts that may have been credited as a uniform gratuity during the current enrollment: *Provided*, That should any member of the Naval Reserve Force sever his connection with the service without compulsion on part of the Government before the expiration of his term of enrollment, the amount so credited shall be deducted from any money that may be or may become due him. [39 Stat. L. 589.]

[Auxiliary vessels — preference to Reserve Force.] Hereafter, in shipping officers and men for service on board United States auxiliary vessels, preference shall be given to members of the Naval Reserve Force, and, after two years from the date of approval of this Act, no person shall be shipped for such service who is not a member of the Naval Reserve Force herein provided. [39 Stat. L. 589.]

[Transfer of members to other classes.] Members of the Naval Reserve Force may, upon application, be transferred from one class to another class for which qualified under the provisions of this Act; and may in time of war volunteer for and be assigned to duties prescribed for any class which they may be deemed competent to perform. [39 Stat. L. 589.]

[Flag or pennant.] The Secretary of the Navy shall prescribe a suitable flag, or pennant, that may be flown as an insignia on private vessels or vessels of the merchant service commanded by officers of the Naval Reserve Force: *Provided*, That it shall not be flown in lieu of the National ensign. [39 Stat. L. 589.]

[Schools for instruction — admissions — certificates on completing course.] * * * The Secretary of the Navy is hereby authorized to establish schools or camps of instruction at such times and in such localities as he may deem advisable for the purpose of instructing members and applicants for membership in the Naval Reserve Force. No applicant shall be accepted for instruction unless he agrees to abide by the regulations of the school and pursue the course prescribed by the Secretary of the Navy. Persons who satisfactorily complete the course will be given certificates of qualification for the rank or rating for which duly qualified, and may be permitted to enroll in the proper class of the reserve in such rank or rating. For the purpose of carrying into effect this paragraph of the Act there is

hereby appropriated, out of any money in the Treasury not otherwise appropriated, \$30,000, which is hereby made available to be expended as the Secretary of the Navy may direct in the necessary equipment and maintenance of such schools and camps. [39 Stat. L. 589.]

[Qualifications for enlistment in.] Members of the Naval Reserve Force who have enrolled for general service and are citizens of the United States are eligible for membership in the Naval Reserve. No person shall be enrolled in or transferred to this class unless he establishes satisfactory evidence as to his qualifications for duty on board combatant ships of the Navy. [39 Stat. L. 591 as amended by — Stat. L. —.]

This paragraph was amended to read as here given by the Naval Appropriation Act of July 1, 1918, ch. —. As originally enacted it was as follows:

"Members of the Naval Reserve Force who have been or may be engaged in the seagoing profession, and who have enrolled for general service, shall be eligible for membership in the Naval Reserve. No person shall be first enrolled in this class who is less than eighteen or more than thirty-five years of age, nor unless he furnishes satisfactory evidence as to his ability and character; nor shall any person be appointed an officer in this class unless he shall have had not less than two years' experience as an officer on board of lake or ocean going vessels."

[Service for rank — service during term.] The minimum active service required of members to qualify for confirmation in their rank or rating in this class shall be three months.

The minimum active service required for maintaining the efficiency of a member of this class is three months during each term of enrollment. This active service may be in one period or in periods of not less than three weeks each year. [39 Stat. L. 591.]

[United States Naval Reserve — continuous service pay — reenlistments — back pay or allowances.] * * * Any former member of class one of the United States Naval Reserve, established by the Act of March third, nineteen hundred and fifteen, "An Act making appropriations for the naval service for the fiscal year ending June thirtieth, nineteen hundred and sixteen, and for other purposes," who shall have reenlisted in the Navy prior to May first, nineteen hundred and seventeen, shall be held and considered to have reenlisted within four months from the date of discharge from the Navy for the purpose of continuous-service pay. And any such member of the said Naval Reserve who was serving therein on August twenty-ninth, nineteen hundred and sixteen, shall upon his application therefor, any time prior to July first, nineteen hundred and seventeen, be enrolled in the Naval Reserve Force, and any such person so enrolled shall, for all purposes, be considered as having served continuously in such Naval Reserve Force since August twenty-ninth, nineteen hundred and sixteen, with due credit for previous and continuous service in the Naval Reserve in the same manner and to the same effect as for equal length of service in the Naval Reserve Force: *Provided*, That no such enrolled person shall receive any back pay or allowances for any period during which he shall have received pay or allowances, or either, for service

in any other branch of the naval service, regular or reserve. [39 Stat. L. 1174.]

This is from the Naval Appropriation Act of March 4, 1917, ch. 180.
For the Act of March 3, 1915, ch. 83, mentioned in the text, see 1914 Supp. Fed. Stat. Ann. 175; 6 Fed. Stat. Ann. (2d ed.) 1234.

An Act To increase the age limit for persons appointed as officers in the Naval Reserve.

[Act of April 25, 1917, ch. —, — Stat. L. —.]

[Naval Reserve Force — officers — age limit.] That the maximum limit of age for officers of the Naval Reserve of the Naval Reserve Force on first appointment as such therein be, and it is hereby increased from thirty-five to fifty years. [— Stat. L. —.]

An Act Making appropriations for the naval service for the fiscal year ending June thirtieth, nineteen hundred and nineteen, and for other purposes.

[Act of July 1, 1918, ch. —, — Stat. L. —.]

[Naval Militia — National Naval Volunteers — transfer to Naval Reserve Force or Marine Corps Reserve.] * * * That upon the approval of this Act all laws heretofore enacted by the Congress relating to the Naval Militia and the National Naval Volunteers be, and the same hereby are, repealed; and the President is authorized to transfer as a class all members of the National Naval Volunteers to the class "the Naval Reserve," "the Naval Reserve Flying Corps," or "the Marine Corps Reserve" of the Naval Reserve Force or the Marine Corps Reserve, for general service, in the confirmed rank, grade, or rating they now hold in the National Naval Volunteers, regardless of their being members of a State military force, and without examination and the necessity of executing or filing a new oath and acceptance of office; that until such transfer is effected members of the National Naval Volunteers shall retain their present status and be entitled to receive the same pay, allowances, gratuities, and other benefits as heretofore provided by law, and shall continue subject to the laws prescribed for the government of the Navy; that all members of the Naval Reserve Force shall be eligible for reenrollment in the rank, grade, or rating held on the termination of their last enrollment; that no enrollments or promotions shall be made in any rank or grade above that of lieutenant commander, except as herein otherwise provided. [— Stat. L. —.]

For provisions relating to the Naval Militia and the National Naval Volunteers, see MILITIA.

[Medical and Dental Reserve Corps — enrollment of members in Naval Reserve Force.] * * * That all laws heretofore enacted by Congress

relating to the Medical Reserve Corps, and Dental Reserve Corps be, and the same hereby are repealed: *Provided*, That members of the Medical Reserve Corps and Dental Reserve Corps may be enrolled in the Naval Reserve Force in their present grades and ranks. [— *Stat. L.* —.]

The Medical Reserve Corps was authorized by the Act of Aug. 22, 1912, ch. 335. See 6 Fed. Stat. Ann. (2d ed.) 1101.

The Dental Reserve Corps was authorized by the Naval Appropriation Act of Aug. 29, 1916, ch. 417, 39 Stat. L. 574, as follows:

"That a Navy Dental Reserve Corps is hereby authorized to be organized and operated under the provisions of the Act approved August twenty-second, nineteen hundred and twelve, providing for the organization and operation of a Navy Medical Reserve Corps, and differing therefrom in no respect other than that the qualification requirements of the appointees shall be dental surgeons and graduates of reputable schools of medicine or dentistry instead of "reputable schools of medicine," and so many said appointees may be ordered to temporary active service as the Secretary of the Navy may deem necessary to the health and efficiency of the personnel of the Navy and Marine Corps, provided the whole number of both Naval Dental Corps and Naval Dental Reserve Corps officers in active service shall not exceed in time of peace one to one thousand of the officers and enlisted men of the Navy and Marine Corps: *Provided*, That all officers now in the Navy Dental Reserve Corps shall be recommissioned in the Navy Dental Reserve Corps provided in this Act, in the order of their original appointment in said Corps, and hereafter when ordered to active duty officers of the Medical Reserve Corps and officers of the Dental Reserve Corps shall receive promotion in rank in the respective Reserve Corps under the same relative conditions and provisions of active service as is provided in this Act for the Naval Dental Corps."

[Ranks, grades and ratings—age limits.] That the age limits for the several ranks, grades, and ratings on first enrollment in the Naval Reserve shall be as prescribed by the Secretary of the Navy. [— *Stat. L.* —.]

[Minimum active service required.] That the minimum active service required for maintaining the efficiency of a member of the Naval Reserve shall be two months during each term of enrollment and an attendance at not less than thirty-six drills during each year, or other equivalent duty. The active service may be in one period or in periods of not less than fifteen days each. [— *Stat. L.* —.]

[Annual retainer pay—continuous service—retirement.] That the annual retainer pay of members of the Naval Reserve Force, except officers in the Naval Auxiliary Reserve and transferred members of the Fleet Naval Reserve, after confirmation in rank, grade, or rating, shall be the equivalent of two months' base pay of the corresponding rank, grade, or rating in the Navy, but the highest base pay upon which the retainer pay of officers of the Naval Reserve Force shall be computed, shall not be greater than the base pay of a lieutenant commander. Service in the Navy, Marine Corps, National Naval Volunteers, and Naval Militia shall be counted as continuous service in the Naval Reserve Force, both for the purpose of retirement and of computing retainer pay: *Provided*, That no member of the Naval Reserve Force shall be eligible for retirement other than for physical disability incurred in line of duty: *Provided further*, That no retainer pay of any member of the Naval Reserve Force except those enlisted men transferred to the Fleet Naval Reserve after sixteen or twenty or more years' naval service shall be in excess of the amount authorized to

members having had sixteen years' continuous service therein. [— *Stat. L.* —.]

The Army Appropriation Act of Aug. 29, 1916, ch. 417, 39 Stat. L. 591, provided as follows:

"The annual retainer pay of members in this class after confirmation in rank or rating shall be two months' base pay of the corresponding rank or rating in the Navy."

[Performance of duty afloat by members.] That in time of peace the Secretary of the Navy is authorized, in his discretion, to order any member of the Naval Reserve Force, with his consent, who has been confirmed in his rank, grade, or rating, to perform any duty afloat for any period of time for which his services may be required: *Provided*, That such members may be relieved from duty by the Secretary of the Navy at any time and shall upon their own application be released from said duty within four months from the date of their application therefor. [— *Stat. L.* —.]

[Clothing — gratuity — issuance.] That the uniform gratuity for the members, other than officers, of each class of the Naval Reserve Force shall be the same as that prescribed for enlisted men of the Navy, but in time of peace the Secretary of the Navy shall prescribe the portion of the clothing gratuity to be issued to such members, other than officers, of the Naval Reserve Force. [— *Stat. L.* —.]

[Retainer pay in time of peace.] That in time of peace no member of any class of the Naval Reserve Force shall be entitled to retainer pay when assigned to active duty for purposes other than training. [— *Stat. L.* —.]

[Clothing gratuity to members — deduction from their accounts.] That no part of the clothing gratuity credited to members of the Naval Reserve Force shall be deducted from their accounts where said members accept or have accepted temporary appointments in the Navy in time of war or other national emergency. [— *Stat. L.* —.]

[Disenrollment of members on account of age.] That members of the Naval Reserve Force shall upon reaching the age of sixty-four years be disenrolled except that in time of war or other national emergency such members of the Naval Reserve Force, if in active service, may be continued therein during such period as the Secretary of the Navy may determine, but not longer than six months after said war or other national emergency shall cease to exist. [— *Stat. L.* —.]

[Officers — promotions.] That no officer of any class of the Naval Reserve Force shall in time of peace be promoted above the grade of lieutenant commander, but in time of war or other national emergency officers of the Naval Reserve Force of and above the rank of lieutenant commander in active service shall be eligible for selection for promotion to the next higher grade or rank by the same board of officers that selects officers of the United States Navy for promotion to such higher ranks and grades, under the same rules and regulations as apply to the selection for promotion of officers of the United States Navy. The promotion of officers

of the Naval Reserve Force below the rank of lieutenant commander shall at all times be in accordance with such regulations as the Secretary of the Navy may prescribe. [— *Stat. L.* —.]

[Officers — precedence.] That when on active duty officers of the Naval Reserve Force shall take precedence among themselves and with other officers of the naval service in their respective grades or ranks according to the dates of their commissions or provisional assignment of rank in the Naval Reserve Force: *Provided*, That all officers of the Naval Reserve Force of and above the rank of lieutenant commander shall rank with but after officers of the same rank or grade in the United States Navy, except that in time of war or other national emergency such officers of the Naval Reserve Force shall have a date of precedence with officers of the United States Navy as of the date of general mobilization, to be established by the Secretary of the Navy: *Provided further*, That during the present emergency the date of precedence of all officers of the Naval Reserve Force shall be as prescribed by the Secretary of the Navy. [— *Stat. L.* —.]

[Pay and allowances — active service.] Members of the Naval Reserve Force when employed in active service, ashore or afloat, under the Navy Department shall receive the same pay and allowances as received by the officers and enlisted men of the Regular Navy of the same rank, grades, or ratings and of the same length of service, which shall include service in the Navy, Marine Corps, Naval Reserve Force, Naval Militia, National Naval Volunteers, or Marine Corps Reserve. [— *Stat. L.* —.]

[Laws, regulations and orders — wearing uniforms.] * * * Enrolled members of the Naval Reserve Force when in active service shall be subject to the laws, regulations, and orders for the government of the Regular Navy, and the Secretary of the Navy may, in his discretion, permit the members of the Naval Reserve Force to wear the uniform of their respective ranks, grades, or ratings while not in active service, and such members shall, for any act committed by them while wearing the uniform of their respective ranks, grades, or ratings, be subject to the laws, regulations, and orders for the government of the Regular Navy. [— *Stat. L.* —.]

IV. FLEET NAVAL RESERVE

[Fleet Naval Reserve — persons eligible for membership.] All former officers of the United States naval service, including midshipmen, who have left that service under honorable conditions, and those citizens of the United States who have been, or may be entitled to be, honorably discharged from the naval service after not less than one four-year term of enlistment or after a term of enlistment during minority, and who shall have enrolled in the Naval Reserve Force shall be eligible for membership in the Fleet Naval Reserve. [39 *Stat. L.* 589.]

The foregoing and the following nine paragraphs of the text are from the Naval Appropriation Act of Aug. 29, 1916, ch. 417.

[Transfer of enlisted men.] In addition to the enrollments in the Fleet Naval Reserve above provided, the Secretary of the Navy is authorized to transfer to the Fleet Naval Reserve at any time within his discretion any enlisted man of the naval service with twenty or more years' naval service, and any enlisted man, at the expiration of a term of enlistment who may be then entitled to an honorable discharge, after sixteen years' naval service: *Provided*, That such transfers shall only be made upon voluntary application and in the rating in which then serving, and the men so transferred shall be continued in the Fleet Naval Reserve until discharged by competent authority. [39 Stat. L. 589.]

See the note to the first paragraph of this Act, *supra*, p. 556.

[Assignment to active duty for training—travel allowance.] The Secretary of the Navy is authorized to assign any member of the Fleet Naval Reserve to active duty for training upon the application of such member, but any member who has failed to perform three months' active service with the Navy in any term of enrollment shall, on the next reenrollment, receive retainer pay at the rate of \$12 per annum until such time as he shall have completed three months' active service. The three months' active service with the Navy may be taken in one or more periods, at the election of the member: *Provided*, That no member shall be entitled to travel allowance unless the period of such active service is for not less than one month, or unless specifically provided for by such regulations as may be prescribed by the Secretary of the Navy. [39 Stat. L. 590 as amended by — Stat. L. —.]

See the note to the first paragraph of this Act, *supra*, p. 556.

As originally enacted the first clause of the first sentence of this paragraph was as follows: "The Secretary of the Navy is authorized to assign any member of the Fleet Naval Reserve to active duty for training on board ship, upon the application of such member." This clause was amended by the Act of April 15, 1917, ch. —, by striking therefrom the words "on board ship," causing it to read as here-given.

[Retainer pay—enlistment period.] The retainer pay of the enrolled men of the Fleet Naval Reserve shall be the same as for the enrolled men of the Naval Reserve and shall be computed in like manner: *Provided*, That nothing herein shall operate to reduce the retainer pay allowed by existing law to enlisted men who, after sixteen years' or more naval service, are transferred to the Fleet Naval Reserve, nor to deny to such enlisted men their privilege of retirement upon completing thirty years' naval service as now provided by law: *Provided*, That for all purposes of this Act a complete enlistment during minority and any enlistment terminated within three months prior to the expiration of the term of enlistment by special order of the Secretary of the Navy shall be considered as four years' service. The annual retainer pay of officers of the Fleet Naval Reserve shall be two months' base pay of the corresponding rank in the Navy. [39 Stat. L. 590 as amended by — Stat. L. —.]

See the note to the first paragraph of this Act, *supra*, p. 556.

The provisions of this paragraph relating to retainer pay were amended to read as given in the text by the Naval Appropriation Act of July 1, 1918, ch. —. As originally enacted they were as follows:

"Men enrolled in the Fleet Naval Reserve with less than eight years' naval service shall be paid at the rate of \$50 per annum; those with eight or more years and less

than twelve years' naval service shall be paid at the rate of \$72 per annum; and those with twelve or more years' naval service shall be paid at the rate of \$100 per annum, such pay to be considered as retainer pay for the obligation on the part of such members to serve in the Navy in time of war or national emergency."

[Reenrollments — retainer pay — reenlistment in regular service — retainer pay.] Reenrollments in the Fleet Naval Reserve shall be for four years. Officers and men enrolling in the Fleet Naval Reserve within four months of the date of the termination of their last naval service or reenrolling within four months of the date of the termination of their last term of enrollment shall receive an increase of twenty-five per centum of their retainer pay for each such enrollment: *Provided*, That men who have enrolled in the Fleet Naval Reserve within four months of the date of their discharge from the regular naval service shall, upon reenlistment in the regular naval service within four months of the date of discharge from the Fleet Naval Reserve, be entitled to the same gratuity and additional pay as if they had reenlisted in the regular naval service within four months of discharge therefrom. [39 Stat. L. 590.]

See the note to the first paragraph of this Act, *supra*, p. 556.

[Longevity increase of retainer pay — heroism or good conduct — credit.] Members of the Fleet Naval Reserve who have, when transferred to the Fleet Naval Reserve, completed naval service of sixteen or twenty or more years shall be paid a retainer at the rate of one-third and one-half, respectively, of the base pay they were receiving at the close of their last naval service plus all permanent additions thereto: *Provided*, That the pay authorized in this paragraph as a retainer shall be increased ten per centum for all men who may be credited with extraordinary heroism in the line of duty or whose average marks in conduct for twenty years or more shall not be less than ninety-five per centum of the maximum. [39 Stat. L. 590.]

See the note to the first paragraph of this Act, *supra*, p. 556.

[Forfeiture of pay.] Any pay which may be due any member of the Fleet Naval Reserve shall be forfeited when so ordered by the Secretary of the Navy upon the failure, under such conditions as may be prescribed by the Secretary of the Navy, of such man to report for inspection. [39 Stat. L. 590.]

See the note to the first paragraph of this Act, *supra*, p. 556.

[Issue of warrants or commissions.] Members of the Fleet Naval Reserve who have established their qualifications by examination to the satisfaction of the Secretary of the Navy may be given warrants or commissions in the Fleet Naval Reserve in the grades of boatswain, gunner, carpenter, machinist, pharmacist, pay clerk, ensign for deck or engineering duties, or in the lowest grades of the staff corps: *Provided further*, That those so warranted or commissioned shall not be deprived of the retainer pay, allowances, or gratuities to which they would be otherwise entitled. [39 Stat. L. 590.]

See the note to the first paragraph of this Act, *supra*, p. 556.

[Discharges — voluntary retirement.] Men transferred to the Fleet Naval Reserve shall be governed by the laws and regulations for the government of the Navy and shall not be discharged from the Naval Reserve Force without their consent, except by sentence of a court-martial. They may, upon their own request, upon completing thirty years' service, including naval and fleet naval reserve service, be placed on the retired list of the Navy with the pay they were then receiving plus the allowances to which enlisted men of the same rating are entitled on retirement after thirty years' naval service. They shall be required to keep on hand such part of the uniform-clothing outfit as may be prescribed by the Secretary of the Navy. [39 Stat. L. 591.]

See the note to the first paragraph of this Act, *supra*, p. 556.

[Active service in time of war.] The Secretary of the Navy is authorized in time of war or when a national emergency exists to call any enlisted man on the retired list into active service for such duty as he may be able to perform. While so employed such enlisted men shall receive the same pay and allowances they were receiving when placed on the retired list. [39 Stat. L. 591.]

See the note to the first paragraph of the text, *supra*, p. 556.

V. NAVAL AUXILIARY RESERVE

[Naval Auxiliary Reserve — eligibility for membership.] Members of the Naval Reserve Force of the seagoing profession who shall have been or may be employed on American vessels of the merchant marine of suitable type for use as naval auxiliaries and which shall have been listed as such by the Navy Department for use in war, shall be eligible for membership in the Naval Auxiliary Reserve. [39 Stat. L. 591.]

This and the four paragraphs of the text following are from the Naval Appropriation Act of Aug. 29, 1916, ch. 417.

[Service on vessels of merchant ship type.] In time of war or during the existence of a national emergency, persons in this class shall be required to serve only in vessels of the merchant ship type, except in cases of emergency, to be determined by the senior officer present, when said officer may, in his discretion, detail them for temporary duty elsewhere as the exigencies of the service may require. [39 Stat. L. 591.]

See the note to the first paragraph of this Act, *supra*, p. 556.

[Qualifications of officers and men.] The requirement as to qualifications of officers and men for confirmation in rank or rating, and as to the maintenance of efficiency in rank or rating, shall be prescribed by the Secretary of the Navy and shall be limited to the requirements for the proper organization, discipline, maneuvering, navigation, and operation of vessels of the merchant ship type while performing auxiliary service to

the fleet in time of war, and length of time of employment on board such vessels in the merchant service. [39 Stat. L. 591.]

See the note to the preceding paragraph of text.

[Command of officers.] Officers in the Naval Auxiliary Reserve shall exercise military command only on board the ships to which they are attached and in the naval auxiliary service. [39 Stat. L. 592.]

See the note to the first paragraph of this Act, *supra*, p. 559.

[Retainer pay.] The annual retainer pay of members in this class after confirmation in rank or rating shall be for officers, one month's base pay of the corresponding rank in the Navy, and for men, two months' base pay of the corresponding rating in the Navy. [39 Stat. L. 592.]

See the note to the first paragraph of this Act, *supra*, p. 559.

VI. NAVAL COAST DEFENSE RESERVE

[Naval Coast Defense Reserve — eligibility for membership.] Members of the Naval Reserve Force who may be capable of performing special useful service in the Navy or in connection with the Navy in defense of the coast, shall be eligible for membership in the Naval Coast Defense Reserve. [39 Stat. L. 592.]

This and the three paragraphs of the text following are from the Naval Appropriation Act of Aug. 29, 1916, ch. 417.

[Classes of service to be enrolled for — owners of yachts, boats, etc.— contracts for use of boats, etc.] Persons may enroll in this class for service in connection with the naval defense of the coast, such as service with coast-defense vessels, torpedo craft, mining vessels, patrol vessels or as radio operators, in various ranks or ratings corresponding to those of the Navy for which they shall have qualified under regulations prescribed by the Secretary of the Navy: *Provided*, That the Secretary of the Navy may permit the enrollment in this class of owners and operators of yachts and motor power boats suitable for naval purposes in the naval defense of the coast; and is hereby authorized to enter into contract with the owners of such power boats and other craft suitable for war purposes to take over the same in time of war or national emergency upon payment of a reasonable indemnity. [39 Stat. L. 592.]

See the note to the preceding paragraph of the text.

[Service for rank and rating.] The amount of active service required for confirmation in rank and rating and for maintaining efficiency in rank and rating shall be the same as that required for members of the Naval Reserve. [39 Stat. L. 592.]

See the note to the second preceding paragraph of the text.

[Retainer pay.] The annual retainer pay of members of this class shall be the same as that of members of the Naval Reserve. [39 Stat. L. 592.]

See the note to the third preceding paragraph of the text.

[Officers — exercise of command.] No officer of the Naval Coast Defense Reserve or officer of the Naval Reserve Flying Corps shall exercise command except within his particular department or service for the due performance of his respective duties. [— Stat. L. —.]

This is from the Naval Appropriation Act of July 1, 1918, ch. —.

VII. VOLUNTEER NAVAL RESERVE

[Volunteer Naval Reserve — composition.] The Volunteer Naval Reserve shall be composed of those members of the Naval Reserve Force who are eligible for membership in any one of the other classes of the Naval Reserve Force, and who obligate themselves to serve in the Navy in any one of said classes without retainer pay and uniform gratuity in time of peace. [39 Stat. L. 592.]

This is from the Naval Appropriation Act of Aug. 29, 1916, ch. 417.

VIII. NAVAL RESERVE FLYING CORPS

[Naval Reserve Flying Corps — composition — commissions — services — retainer pay.] The Naval Reserve Flying Corps shall be composed of officers and student flyers who have been transferred from the Naval Flying Corps to the Naval Reserve Flying Corps and of enlisted men who shall have been so transferred under the same conditions as those provided by law for enlisted men of the Navy transferred to the Fleet Naval Reserve: *Provided*, That surplus graduates of the aeronautic school may be commissioned as ensigns in the Naval Reserve Flying Corps and promoted therein under such regulations as may be prescribed by the President. Members of the Naval Reserve Force skilled in the flying of aircraft or in their design, building, or operation, shall be eligible for membership in the Naval Reserve Flying Corps. The amount of active service required for confirmation in grade, rank, or rating, and for maintaining efficiency therein, shall be the same as that required for members of the Naval Reserve. The retainer pay of members of the Naval Reserve Flying Corps shall be the same as that of members of the Naval Reserve. [39 Stat. L. 592.]

This is from the Naval Appropriation Act of Aug. 29, 1916, ch. 417.

[Officers — exercise of command.] No officer of the Naval Coast Defense Reserve or officer of the Naval Reserve Flying Corps shall exercise command except within his particular department or service for the due performance of his respective duties. [— *Stat. L.* —.]

This is from the Naval Appropriation Act of July 1, 1913, ch. —.

IX. MARINE CORPS

SEC. 3. [Marine Corps increase.] That the following increase in the United States Marine Corps be, and the same is hereby, authorized: Two majors, twelve captains, eighteen first lieutenants, two assistant quartermasters with the rank of captain, one assistant paymaster with the rank of captain, five quartermaster sergeants, five first sergeants, five gunnery sergeants, and eleven sergeants. [39 *Stat. L.* 224.]

This is from an Act of June 12, 1916, ch. 140. Sections 1, 2, 4, 5 of this Act are given *supra*, p. 506.

[Commissioned personnel — proportionate distribution — brigadier generals — major general commandant — senior staff officers.] Hereafter the total number of commissioned officers of the active list of the line and staff of the Marine Corps, exclusive of officers borne on the Navy list as additional numbers, shall be four per centum of the total authorized enlisted strength of the active list of the Marine Corps, exclusive of the Marine Band, and of men under sentence of discharge by court-martial, distributed in the proportion of one officer with rank senior to colonel to four with the rank of colonel, to five with the rank of lieutenant colonel, to fourteen with the rank of major, to thirty-seven with the rank of captain, to thirty-one with the rank of first lieutenant, to thirty-one with the rank of second lieutenant: *Provided further*, That brigadier generals shall be appointed from officers of the Marine Corps senior in rank to lieutenant colonel: *Provided further*, That the promotion to the grade of brigadier general of any officer now or hereafter carried as an additional number in the grade or with the rank of colonel shall be held to fill a vacancy in the grade of brigadier general: *Provided further*, That in determining the officers with rank senior to colonel there shall be included the officer serving as major general commandant: *And provided further*, That appointments hereafter made to the position of major general commandant under the provisions of the Act approved December nineteenth, nineteen hundred and thirteen, entitled "An Act to make the tenure of office of the major general commandant of the Marine Corps for a term of four years," shall be made from officers of the active list of the Marine Corps not below the rank of colonel: *Provided further*, That the officers serving in the senior grade of the Adjutant and Inspector's, Quartermaster's, and Paymaster's Departments shall, while serving therein, have the rank, pay, and allowances of a brigadier general: *And provided further*, That for the purpose of determining the number of officers to the various ranks as herein provided such staff officers shall be counted as being of the rank of

colonel: *And provided further*, That officers holding permanent appointments in the staff departments shall not be eligible for appointment to the grade of brigadier general of the line as hereinbefore provided. [39 Stat. L. 609.]

This and the thirteen paragraphs of the text following are from the Naval Appropriation Act of Aug. 29, 1916, ch. 417.

For the Act of Dec. 19, 1913, ch. 3, mentioned in the text, see 1914 Supp. Fed. Stat. Ann. 301; 6 Fed. Stat. Ann. (2d ed.) 1232.

[Staff officers — proportionate ratio.] The total commissioned personnel of the active list of the staff departments, whether serving therein under permanent appointments or under temporary detail, as herein provided, shall be eight per centum of the authorized commissioned strength of the Marine Corps, and of this total one-fifth shall constitute the adjutant and inspector's department, one-fifth the paymaster's department, and three-fifths the quartermaster's department. [39 Stat. L. 610.]

See the note to the preceding paragraph of the text.

[Details — in lower grade — in upper grade.] No further permanent appointments shall be made in any grade in any staff department. Any vacancy hereafter occurring in the lower grade of any staff department shall be filled by the detail of an officer of the line for a period of four years unless sooner relieved; any vacancy hereafter occurring in the upper grade of any staff department shall be filled by the appointment of an officer with the rank of colonel holding a permanent appointment in the staff department in which the vacancy exists, or of some other officer holding a permanent appointment in such staff department in case there be no permanent staff officer with the rank of colonel in that department, or of a colonel of the line in case there be no officer holding a permanent appointment in such staff department. Such appointments shall be made by the President and be for a term of four years, and the officer so appointed shall be recommissioned in the grade to which appointed. [39 Stat. L. 610.]

See the note to the first paragraph of this Act, *supra*, this page.

[Permanent staff officers — reappointment in line — rank — probationary line service.] That prior to June thirtieth, nineteen hundred and eighteen, an officer holding a permanent appointment in any staff department may, upon his own application, with the approval of the President, be reappointed in the line of the Marine Corps in the grade and with the rank he would hold on the date of his reappointment if he had remained continuously in the line: *Provided*, That no officer holding a permanent appointment in any staff department shall be recommissioned in the line with the rank of colonel or lieutenant colonel: *Provided further*, That such staff officer shall, before being reappointed in the line of the Marine Corps as above provided, perform line duties for one year, at the expiration of which time he shall as a prerequisite to reappointment in the line be required to establish to the satisfaction of an examining board consisting of line officers of the Marine Corps his physical, mental, and professional fitness for the performance of line duty. [39 Stat. L. 610.]

See the note to the first paragraph of this Act, *supra*, this page.

[Equalization of promotions — examinations.] That for the purpose of advancement in rank to and including the grade of colonel, all commissioned officers of the line and staff of the Marine Corps shall be placed on a common list in the order of seniority each would hold had he remained continuously in the line. All advancements in rank to captain, major, lieutenant colonel, and colonel shall, subject to the usual examinations, be made from officers with the next junior respective rank, whether of the line or staff, in the order in which their names appear on said list. [39 Stat. L. 610.]

See the note to the first paragraph of this Act, *supra*, p. 563.

[Second lieutenants — appointment — conditions.] Appointees to the grade of second lieutenant, if appointed from civil life, shall be between the ages of twenty and twenty-five years, and before receiving a commission in the Marine Corps, each appointee shall establish to the satisfaction of the Secretary of the Navy his mental, physical, moral, and professional qualifications for such commission: *Provided*, The President of the United States be, and hereby is, authorized, by and with the advice and consent of the Senate, to appoint as second lieutenants on the active list in the United States Marine Corps, to take rank at the foot of the list of second lieutenants as it stands at the date of reinstatement, former officers of the Marine Corps who resigned from the naval service in good standing: *Provided*, That they shall establish their moral, physical, mental, and professional qualifications to perform the duties of that grade to the satisfaction of the Secretary of the Navy: *Provided further*, That the Secretary of the Navy, in his discretion, may waive the age limit in favor of the aforesaid former officers of the Marine Corps: *Provided further*, That the prior service of such officers and the service after reinstatement shall be not less than thirty years before the age of retirement. That appointments from noncommissioned officers of the Marine Corps and from civil life shall be for a probationary period of two years and may be revoked at any time during that period by the Secretary of the Navy: *Provided further*, That the rank of such officers of the same date of appointment among themselves at the end of said probationary period shall, with the approval of the Secretary of the Navy, be determined by the report of a board of Marine officers who shall conduct a competitive professional examination under such rules as may be prescribed by the Secretary of the Navy and the rank of such officers so determined shall be as of date of original appointment with reference to other appointments to the Marine Corps: *Provided further*, That no midshipman at the United States Naval Academy or cadet at the United States Military Academy who fails to graduate therefrom shall be eligible for appointment as a commissioned officer in the Marine Corps until after the graduation of the class of which he was a member. [39 Stat. L. 610.]

See the note to the first paragraph of this Act, *supra*, p. 563.

[Marine gunner and quartermaster clerk — warrant grades established — appointments.] That the warrant grades of marine gunner and quartermaster clerk are hereby established, and the appointment as herein prescribed of twenty marine gunners and twenty quartermaster clerks is hereby authorized. Officers in those grades shall have the rank and receive the pay, allowances and privileges of retirement of warrant officers in the

Navy. They shall be appointed from the noncommissioned officers of the Marine Corps and clerks to quartermasters now serving as such and who have performed field service. [39 Stat. L. 611.]

See the note to the first paragraph of this Act, *supra*, p. 563.

There appeared, following this paragraph, in this Act, as originally enacted, a paragraph as follows:

"That officers of the Marine Corps with the rank of colonel who shall have served faithfully for forty-five years on the active list shall, when retired, have the rank of brigadier general; and such officers who shall hereafter be retired at the age of sixty-four years before having served for forty-five years, but who shall have served faithfully on the active list until retired, shall, on the completion of forty years from their entry in the naval service, have the rank of brigadier general."

This was repealed by the Act of May 22, 1917, ch. —, § 14, — Stat. L. —.

[Restoration of retired officers to active list.] The President is hereby authorized, within two years after the approval of this Act, by and with the advice and consent of the Senate, to transfer to the active list of the Marine Corps or Navy Pay Corps any officer under fifty years of age who may have been transferred from the active list to the retired list of the Marine Corps or Navy Pay Corps by the action of any retiring board for physical disability incurred in the line of duty: *Provided*, That such officer shall be transferred to the place on the active list which he would have had if he had not been retired, and shall be carried as an additional number in the grade to which he may be transferred or at any time thereafter promoted: *Provided further*, That such officer shall establish to the satisfaction of the Secretary of the Navy his mental, moral, professional, and physical qualifications to perform the duties on the active list of the grade to which he is transferred. The provisions of sections fourteen hundred and ninety-three and fourteen hundred and ninety-four of the Revised Statutes of the United States shall apply to the Marine Corps. [39 Stat. L. 611.]

See the note to the first paragraph of this Act, *supra*, p. 563.

For R. S. secs. 1493, 1494, mentioned in this paragraph, see 5 Fed. Stat. Ann. 294, 295; 6 Fed. Stat. Ann. (2d ed.) 1140, 1141.

[Officers failing in examinations—loss of files—reexamination—discharge.] In lieu of suspension from promotion of any officer of the Marine Corps who hereafter fails to pass a satisfactory professional examination for promotion, or who is now under suspension from promotion by reason of such failure, such officer shall suffer loss of numbers, upon approval of the recommendation of the examining board, in the respective ranks, as follows: Lieutenant colonel, one; major, two; captain, three; first lieutenant, five; second lieutenant, eight: *Provided*, That any such officer shall be reexamined as soon as may be expedient after the expiration of six months if he in the meantime again becomes due for promotion, and if he does not in the meantime again become due for promotion he shall be reexamined at such time anterior to again becoming due for promotion as may be for the best interests of the service: *Provided further*, That if any such officer fails to pass a satisfactory professional reexamination he shall be honorably discharged with one year's pay from the Marine Corps. [39 Stat. L. 611.]

See the note to the first paragraph of this Act, *supra*, p. 563.

[Pay of officers on retired list.] For pay of officers prescribed by law, on the retired list: For two major generals, four brigadier generals, six colonels, four lieutenant colonels, ten majors, nineteen captains, twelve first lieutenants, three second lieutenants and one paymaster's clerk, and for officers who may be placed thereon during the year, including such increased pay as is now or may hereafter be provided for retired officers regularly assigned to active duty, \$180,872.50. [39 Stat. L. 612.]

See the note to the first paragraph of this Act, *supra*, p. 563.

[Pay of enlisted men — increase in number of men authorized.] Pay of enlisted men, active list: Pay and allowances of noncommissioned officers, musicians, and privates, as prescribed by law, and for the following additional enlisted men hereby authorized: Twenty-eight sergeants major, one hundred and seventeen quartermaster sergeants, one hundred and seven first sergeants, one hundred and seven gunnery sergeants, five hundred sergeants, eight hundred and thirty-five corporals, fifty drummers, fifty trumpeters, three thousand two hundred and thirty-five privates; and hereafter the number of enlisted men of the Marine Corps shall be exclusive of those sentenced by court-martial to discharge, and for the expenses of clerks of the United States Marine Corps traveling under orders, and including additional compensation for enlisted men of the Marine Corps regularly detailed as gun captains, gun pointers, mess sergeants, cooks, messmen, signalmen, or holding good-conduct medals, pins, or bars, including interest on deposits by enlisted men, post-exchange debts of deserters, under such rules as the Secretary of the Navy may prescribe, and the authorized travel allowance of discharged enlisted men and for prizes for excellence in gunnery exercise and target practice, both afloat and ashore. [39 Stat. L. 612.]

See the note to the first paragraph of this Act, *supra*, p. 563.

[Further increase in number of men authorized.] The President is authorized, when, in his judgment, it becomes necessary to place the country in a complete state of preparedness, to further increase the enlisted strength of the Marine Corps to seventeen thousand four hundred: *And provided*, That the distribution in the various grades shall be in the same proportion as that authorized at the time when the President avails himself of the authority herein granted. [39 Stat. L. 612.]

See the note to the first paragraph of this Act, *supra*, p. 563.

[Band — composition — pay and allowances.] That the band of the United States Marine Corps shall consist of one leader, whose pay and allowances shall be those of a captain in the Marine Corps; one second leader, whose pay shall be \$150 per month and who shall have the allowances of a sergeant major; ten principal musicians, whose pay shall be \$125 per month; twenty-five first-class musicians, whose pay shall be \$100 per month; twenty second-class musicians, whose pay shall be \$85 per month; and ten third-class musicians, whose pay shall be \$70 per month; such musicians of the band to have the allowances of a sergeant and to have no increase in the rates of pay on account of length of service: *Provided*, That a member of

the said band shall not, as an individual, furnish music, or accept an engagement to furnish music, when such furnishing of music places him in competition with any civilian musician or musicians, and shall not accept or receive remuneration for furnishing music except under special circumstances when authorized by the President. [39 Stat. L. 612.]

See the note to the first paragraph of this Act, *supra*, p. 563.

[Camps of instruction — establishment — regulations.] The Secretary of the Navy is hereby authorized to establish and maintain at such places as he may designate, and prescribe regulations for the government thereof, Marine Corps training camps for the instruction of citizens of the United States who make application and are designated for such training; no such camps to be in existence for a period longer than six weeks in each fiscal year, except in time of actual or threatened war; to use Marine Corps and such other Government property as he may deem necessary for the military training of such citizens while in attendance at such camps. The Quartermaster's Department, United States Marine Corps, is authorized to sell such articles of uniform clothing as may be prescribed at cost price to the volunteer citizens who are designated to participate in these instructions: *Provided*, That these citizens shall be required to furnish at their own expense transportation and subsistence to and from these camps, and subsistence while undergoing training therein. The sum of \$31,000 is hereby appropriated to carry into effect the foregoing provisions. [39 Stat. L. 614.]

See the note to the first paragraph of this Act, *supra*, p. 563.

[Marine gunners — quartermaster clerks — increased compensation for foreign shore service.] * * * That marine gunners and quartermaster clerks of the Marine Corps assigned to foreign shore service shall hereafter be entitled to the same increased compensation and under the same conditions as is now or hereafter allowed by law to commissioned officers of the Marine Corps. [39 Stat. L. 1188.]

This and the three paragraphs of the text following are from the Naval Appropriation Act of March 4, 1917, ch. 180, under the head "Marine Corps."

[Enlisted men on shore duty — rations or commutation.] * * * Hereafter no law shall be construed to entitle enlisted men on shore duty to any rations or commutation therefor other than such as are now or may hereafter be allowed enlisted men in the Army. [39 Stat. L. 1189.]

See the note to the preceding paragraph of the text.

[Worn out machinery, etc.—exchange.] * * * That hereafter worn-out sewing machines, machinery, rubber tires, and band instruments may be exchanged in part payment for the purchase of like articles. [39 Stat. L. 1189.]

See the note to the first paragraph of this Act, *supra*, this page.

[Pay and allowances — enlisted men detailed as clerks, etc.—forfeiture.] * * * That hereafter no part of the pay and allowances authorized for enlisted men detailed as clerks and messengers in the office of the Major General Commandant and the several staff offices shall be forfeited when granted furlough for not exceeding thirty days in each calendar year. [39 Stat. L. 1191.]

See the note to the first paragraph of this Act, *supra*, p. 567.

SEC. 2. [Marine Corps — enlisted strength — increase.] That the authorized enlisted strength of the active list of the Marine Corps is hereby temporarily increased from seventeen thousand four hundred to seventy-five thousand five hundred, this authorized strength being distributed in the various grades of the enlisted force in the same proportion as those authorized at the date of the approval of this Act: *Provided*, That not more than twenty-five per centum of the authorized number of privates in the Marine Corps shall have the rank of private, first class, which rank is hereby established in the Marine Corps. [— Stat. L. —, as amended by — Stat. L. —.]

The foregoing section 2 and the following section 10 are from an Act of May 22, 1917, ch. —, entitled "An Act To temporarily increase the commissioned and warrant and enlisted strength of the Navy and Marine Corps, and for other purposes." Other sections of this Act, applying to both the Navy and the Marine Corps, are given *supra*, p. 523.

This section was amended to read as here given by the Naval Appropriation Act of July 1, 1918, ch. —. As originally enacted it was as follows:

"SEC. 2. That the authorized enlisted strength of the active list of the Marine Corps is hereby temporarily increased from seventeen thousand four hundred to thirty thousand, this authorized strength being distributed in the various grades of the enlisted force in the same proportion as those authorized at the date of the approval of this Act."

SEC. 10. [Marine Corps — second lieutenants — probationary appointment in higher grade.] That, during the continuance of the present war, should any second lieutenant of the Marine Corps holding a probationary appointment for the period of two years become eligible for promotion to a higher grade and qualify therefor before the expiration of two years from the date of original appointment, he shall receive a probationary appointment in such higher grade, which appointment shall be made permanent or shall be vacated in the manner prescribed by the Act of August twenty-ninth, nineteen hundred and sixteen. [— Stat. L. —.]

See the note to the preceding section 2 of this Act.

The Act of Aug. 29, 1916, ch. 417, mentioned in the text, is given *supra*, p. 507.

[SEC. 1.] [Ration or commutation.] That when it is impracticable or the expense is found greater to supply marines serving on shore duty in the island possessions and on foreign stations with the Army ration, such

marines may be allowed the Navy ration or commutation therefor. [— *Stat. L.* —.]

This is from the Deficiencies Appropriation Act of June 15, 1917, ch. —.

A provision identical with that of this paragraph appeared in the Naval Appropriation Act of Aug. 29, 1916, ch. 417, 39 Stat. L. 613, and the like Act of March 4, 1917, ch. 180, 39 Stat. L. 1189.

[Major general — creation of rank.] The rank and title of Major General is hereby created in the Marine Corps, and the President is authorized to nominate, and, by and with the advice and consent of the Senate, to appoint one Major General, who shall at all times be junior in rank to the Major General Commandant, and also one temporary Major General in the Marine Corps, who shall at all times be junior to the permanent Major General. [— *Stat. L.* —.]

This and the two paragraphs of the text following are from the Naval Appropriation Act of July 1, 1918, ch. —.

[Clerks for assistant paymasters — abolition of title — pay clerks — pay allowances or other benefits.] * * * The title of clerks for assistant paymasters is hereby changed to pay clerk, who shall hereafter receive the same pay, allowances, and other benefits now provided by law for clerks for assistant paymasters; and the total number of pay clerks shall not exceed ten for duty in the office of the paymaster, Marine Corps, fifteen for duty in the paymaster's department at large, and one for each assistant paymaster: *Provided*, That nothing herein contained shall be construed to reduce the pay, allowances, or other benefits granted by existing law to any clerk for assistant paymaster now in service. [— *Stat. L.* —.]

See the note to the preceding paragraph of the text.

[Recruits — advertisements.] * * * That hereafter authority is hereby granted to employ the services of advertising agencies in advertising for recruits under such terms and conditions as are most advantageous to the Government. [— *Stat. L.* —.]

See the note to the second preceding paragraph of the text.

Provisions similar to those of the text, but without the word "hereafter," have appeared in Naval Appropriation Acts for preceding years.

X. MARINE CORPS RESERVE

[Marine Corps Reserve — established — classes.] A United States Marine Corps Reserve, to be a constituent part of the Marine Corps and in addition to the authorized strength thereof, is hereby established under the same provisions in all respects (except as may be necessary to adapt the said provisions to the Marine Corps) as those providing for the Naval Reserve Force in this Act: *Provided*, That the Marine Corps Reserve may consist of not more than five classes, corresponding, as near as may be, to the Fleet Naval Reserve, the Naval Reserve, the Naval Coast Defense

Reserve, the Volunteer Naval Reserve, and the Naval Reserve Flying Corps, respectively.

All Acts or parts of Acts relating to the Naval Reserve which are inconsistent with the provisions of this Act relating to the Naval Reserve Force are hereby repealed. [39 Stat. L. 593.]

This is from the Naval Appropriation Act of Aug. 29, 1916, ch. 417.

NEUTRALITY

Act of June 15, 1917, ch. —, 570.

Title V. Enforcement of Neutrality, 570.

- Sec. 1. Withholding Clearance from or to Any Vessel — Attempted Violation of Laws, 570.*
- 2. Detention of Armed Vessels, 571.*
 - 3. Sending Out Armed Vessels to Belligerent Nations, 571.*
 - 4. Clearance of Vessels — Conditions Precedent, 571.*
 - 5. Refusal of Clearance, 572.*
 - 6. Violation of Provision of Title — Punishment, 572.*
 - 7. Interned Persons — Escape, etc. — Punishment, 572.*
 - 8. Enforcement of Purposes of Title, 572.*
 - 11. Repeal of Res. of March 4, 1915, No. 14, 573.*

TITLE V

ENFORCEMENT OF NEUTRALITY

SEC. 1. [Withholding clearance from or to any vessel — attempted violation of laws.] During a war in which the United States is a neutral nation, the President, or any person thereunto authorized by him, may withhold clearance from or to any vessel, domestic or foreign, which is required by law to secure clearance before departing from port or from the jurisdiction of the United States, or, by service of formal notice upon the owner, master, or person in command or having charge of any domestic vessel not required by law to secure clearance before so departing, to forbid its departure from port or from the jurisdiction of the United States, whenever there is reasonable cause to believe that any such vessel, domestic or foreign, whether requiring clearance or not, is about to carry fuel, arms, ammunition, men, supplies, dispatches, or information to any warship, tender, or supply ship of a foreign belligerent nation in violation of the laws, treaties, or obligations of the United States under the law of nations; and it shall thereupon be unlawful for such vessel to depart. [— Stat. L. —.]

The foregoing section 1 and the following sections 2-7, 9 and 11 are a part of "Title V. Enforcement of Neutrality" of the Espionage Act of June 15, 1917, ch. —, entitled "An Act To punish acts of interference with the foreign relations, the neutrality, and the foreign commerce of the United States, to punish espionage, and better to enforce the criminal laws of the United States, and for other purposes." Title XIII of this Act, given in CRIMINAL LAW, *ante*, p. 133, contains general provisions applicable to this title and should be considered in connection with it.

Sections 8 and 10 of this Title amend Penal Laws, §§ 13 and 15, respectively, and are given under PENAL LAWS, *post*, p. 579.

SEC. 2. [Detention of armed vessels.] During a war in which the United States is a neutral nation, the President, or any person thereunto authorized by him, may detain any armed vessel owned wholly or in part by American citizens, or any vessel, domestic or foreign (other than one which has entered the ports of the United States as a public vessel), which is manifestly built for warlike purposes or has been converted or adapted from a private vessel to one suitable for warlike use, until the owner or master, or person having charge of such vessel, shall furnish proof satisfactory to the President, or to the person duly authorized by him, that the vessel will not be employed by the said owners, or master, or person having charge thereof, to cruise against or commit or attempt to commit hostilities upon the subjects, citizens, or property of any foreign prince or state, or of any colony, district, or people with which the United States is at peace, and that the said vessel will not be sold or delivered to any belligerent nation, or to an agent, officer, or citizen of such nation, by them or any of them, within the jurisdiction of the United States, or, having left that jurisdiction, upon the high seas. [— *Stat. L.* —.]

See the notes to the preceding section 1 of this Title.

SEC. 3. [Sending out armed vessels to belligerent nations.] During a war in which the United States is a neutral nation, it shall be unlawful to send out of the jurisdiction of the United States any vessel built, armed, or equipped as a vessel of war, or converted from a private vessel into a vessel of war, with any intent or under any agreement or contract, written or oral, that such vessel shall be delivered to a belligerent nation, or to an agent, officer, or citizen of such nation, or with reasonable cause to believe that the said vessel shall or will be employed in the service of any such belligerent nation after its departure from the jurisdiction of the United States. [— *Stat. L.* —.]

See the notes to section 1 of this Title, *supra*, p. 570.

SEC. 4. [Clearance of vessels — conditions precedent.] During a war in which the United States is a neutral nation, in addition to the facts required by sections forty-one hundred and ninety-seven, forty-one hundred and ninety-eight, and forty-two hundred of the Revised Statutes to be set out in the masters' and shippers' manifests before clearance will be issued to vessels bound to foreign ports, each of which sections of the Revised Statutes is hereby declared to be and is continued in full force and effect, every master or person having charge or command of any vessel, domestic or foreign, whether requiring clearance or not, before departure of such vessel from port shall deliver to the collector of customs for the district wherein such vessel is then located a statement duly verified by oath, that the cargo or any part of the cargo is or is not to be delivered to other vessels in port or to be transhipped on the high seas and, if it is to be so delivered or transhipped, stating the kind and quantities and the value of the total quantity of each kind of article so to be delivered or transhipped, and the name of the person, corporation, vessel, or government, to whom the delivery or transshipment is to be made; and the owners, shippers, or consignors of the cargo of such vessel shall in the same

manner and under the same conditions deliver to the collector like statements under oath as to the cargo or the parts thereof laden or shipped by them, respectively. [— *Stat. L.* —.]

See the notes to section 1 of this Title, *supra*, p. 570.

For R. S. secs. 4197, 4198, 4200, mentioned in this section, see 7 Fed. Stat. Ann. 45, 46; 9 Fed. Stat. Ann. (2d ed.) 296, 297.

SEC. 5. [Refusal of clearance.] Whenever it appears that the vessel is not entitled to clearance or whenever there is reasonable cause to believe that the additional statements under oath required in the foregoing section are false, the collector of customs for the district in which the vessel is located may, subject to review by the Secretary of Commerce, refuse clearance to any vessel, domestic or foreign, and by formal notice served upon the owners, master, or person or persons in command or charge of any domestic vessel for which clearance is not required by law, forbid the departure of the vessel from the port or from the jurisdiction of the United States; and it shall thereupon be unlawful for the vessel to depart. [— *Stat. L.* —.]

See the notes to section 1 of this Title, *supra*, p. 570.

SEC. 6. [Violation of provision of title — punishment.] Whoever, in violation of any of the provisions of this title, shall take, or attempt or conspire to take, or authorize the taking of any such vessel, out of port or from the jurisdiction of the United States, shall be fined not more than \$10,000 or imprisoned not more than five years, or both; and, in addition, such vessel, her tackle, apparel, furniture, equipment, and her cargo shall be forfeited to the United States. [— *Stat. L.* —.]

See the notes to section 1 of this Title, *supra*, p. 570.

SEC. 7. [Interned persons — escape, etc.— punishment.] Whoever, being a person belonging to the armed land or naval forces of a belligerent nation or belligerent faction of any nation and being interned in the United States, in accordance with the law of nations, shall leave or attempt to leave said jurisdiction, or shall leave or attempt to leave the limits of internment in which freedom of movement has been allowed, without permission from the proper official of the United States in charge, or shall willfully overstay a leave of absence granted by such official, shall be subject to arrest by any marshal or deputy marshal of the United States, or by the military or naval authorities thereof, and shall be returned to the place of internment and there confined and safely kept for such period of time as the official of the United States in charge shall direct; and whoever, within the jurisdiction of the United States and subject thereto, shall aid or entice any interned person to escape or attempt to escape from the jurisdiction of the United States, or from the limits of internment prescribed, shall be fined not more than \$1,000 or imprisonment not more than one year, or both. [— *Stat. L.* —.]

See the notes to section 1 of this Title, *supra*, p. 570.

SEC. 9. [Enforcement of purposes of title.] That the President may employ such part of the land or naval forces of the United States as he

may deem necessary to carry out the purposes of this title. [— *Stat. L. —*.]

See the notes to section 1 of this Title, *supra*, p. 570.

SEC. 11. [Repeal of Res. of March 4, 1915, No. 14.] The joint resolution approved March fourth, nineteen hundred and fifteen, "To empower the President to better enforce and maintain the neutrality of the United States," and any Act or parts of Acts in conflict with the provisions of this title are hereby repealed. [— *Stat. L. —*.]

See the notes to section 1 of this Title, *supra*, p. 570.

For the Res. of March 4, 1915, No. 14, repealed by this section, see 1916 Supp. Fed. Stat. Ann. 180; 6 Fed. Stat. Ann. (2d ed.) 1242.

NEWSPAPERS

See TRADING WITH THE ENEMY.

PANAMA CANAL AND CANAL ZONE

See CRIMINAL LAW; HOSPITALS AND ASYLUMS; RIVERS, HARBORS AND CANALS.

PARKS

See PUBLIC PARKS.

PASSPORTS

Act of June 15, 1917, ch. —, 573.

Title IX. Passports, 573.

Sec. 1. Application — Necessity. — Form. — Fees of Officials, 573.

2. False Statements in Passports, 574.

3. Using, etc., Another's Passport or Any Passport in Violation of Law, 574.

4. Counterfeit, etc., Passports, 574.

CROSS-REFERENCE

See CRIMINAL LAW.

TITLE IX.

PASSPORTS.

SEC. 1. [Application — necessity — form — fees of officials.] Before a passport is issued to any person by or under authority of the United States

such person shall subscribe to and submit a written application duly verified by his oath before a person authorized and empowered to administer oaths, which said application shall contain a true recital of each and every matter of fact which may be required by law or by any rules authorized by law to be stated as a prerequisite to the issuance of any such passport. Clerks of United States courts, agents of the Department of State, or other Federal officials authorized, or who may be authorized, to take passport applications and administer oaths thereon, shall collect, for all services in connection therewith, a fee of \$1, and no more, in lieu of all fees prescribed by any statute of the United States, whether the application is executed singly, in duplicate, or in triplicate. [— *Stat. L.* —.]

The foregoing section 1 and the following sections 2-4 constitute "Title IX. Passports" of the Espionage Act of June 15, 1917, ch. —, entitled "An Act To punish acts of interference with the foreign relations, the neutrality, and the foreign commerce of the United States, to punish espionage, and better to enforce the criminal laws of the United States, and for other purposes." Title XIII of this Act, given in *CRIMINAL LAW*, *ante*, p. 133, contains general provisions applicable to this Title and should be read in connection therewith.

SEC. 2. [False statements in passports.] Whoever shall willfully and knowingly make any false statement in an application for passport with intent to induce or secure the issuance of a passport under the authority of the United States, either for his own use or the use of another, contrary to the laws regulating the issuance of passports or the rules prescribed pursuant to such laws, or whoever shall willfully and knowingly use or attempt to use, or furnish to another for use, any passport the issue of which was secured in any way by reason of any false statement, shall be fined not more than \$2,000 or imprisoned not more than five years or both. [— *Stat. L.* —.]

See the note to the preceding section 1 of this Title.

SEC. 3. [Using, etc., another's passport or any passport in violation of law.] Whoever shall willfully and knowingly use, or attempt to use, any passport issued or designed for the use of another than himself, or whoever shall willfully and knowingly use or attempt to use any passport in violation of the conditions or restrictions therein contained, or of the rules prescribed pursuant to the laws regulating the issuance of passports, which said rules shall be printed on the passport; or whoever shall willfully and knowingly furnish, dispose of or deliver a passport to any person, for use by another than the person for whose use it was originally issued and designed, shall be fined not more than \$2,000 or imprisoned not more than five years, or both. [— *Stat. L.* —.]

See the note to section 1 of this Title, *supra*, this page.

SEC. 4. [Counterfeit, etc., passports.] Whoever shall falsely make, forge, counterfeit, mutilate, or alter, or cause or procure to be falsely made, forged, counterfeited, mutilated, or altered any passport or instrument purporting to be a passport, with intent to use the same, or with intent that the same may be used by another; or whoever shall willfully or knowingly use, or attempt to use, or furnish to another for use any such false, forged, counterfeited, mutilated, or altered passport or instrument pur-

porting to be a passport, or any passport validly issued which has become void by the occurrence of any condition therein prescribed invalidating the same, shall be fined not more than \$2,000 or imprisoned not more than five years, or both. [*Stat. L.* —.]

See the note to section 1 of this Title, *supra*, p. 574.

PATENTS

Act of Feb. 15, 1916, ch. 22, 575.

Sec. 1. Officers and Employees — R. S. Sec. 476 Amended, 575.

2. Salaries — R. S. Sec. 477 Amended, 575.

Act of July 6, 1916, ch. 225, 576.

Sec. 1. Application for Patent — Completion — Time Limit — R. S. Sec. 4894 Amended, 576.

Act of Aug. 17, 1916, ch. 350, 576.

Sec. 1. Filing Application — Extension of Time, 576.

2. Limited to Citizens of Nations Granting Reciprocal Rights, 577.

3. Operation of Act, 577.

Act of Oct. 6, 1917, ch. —, 577.

Publication of Patent — Pendency of War, 577.

Act of July 1, 1918, ch. —, 578.

Recovery for Unlicensed Use of Patent by United States — Claims — Defenses — Patents by Government Employees — Former Act Amended, 578.

CROSS-REFERENCE

See *TRADING WITH THE ENEMY*.

[**Sec. 1.**] [**Officers and employees — R. S. sec. 476 amended.**] That section four hundred and seventy-six of the Revised Statutes be, and the same is hereby, amended to read as follows:

"Sec. 476. There shall be in the Patent Office a Commissioner of Patents, one first assistant commissioner, one assistant commissioner, and five examiners in chief, who shall be appointed by the President, by and with the advice and consent of the Senate. The first assistant commissioner and the assistant commissioner shall perform such duties pertaining to the office of commissioner as may be assigned to them, respectively, from time to time by the Commissioner of Patents. All other officers, clerks, and employees authorized by law for the office shall be appointed by the Secretary of the Interior upon the nomination of the Commissioner of Patents, in accordance with existing law." [*39 Stat. L. 8.*]

The foregoing section 1 and the following section 2 are a part of an Act of Feb. 15, 1916, ch. 22, entitled "An Act Amending sections four hundred and seventy-six, four hundred and seventy-seven, and four hundred and forty of the Revised Statutes of the United States."

Section 3 of this Act amended R. S. sec. 440 and is given in *INTERIOR DEPARTMENT, acts*, p. 269.

For R. S. sec. 476 amended by this section see 5 Fed. Stat. Ann. 411; 7 Fed. Stat. Ann. (2d ed.) 4.

SEC. 2. [Salaries — R. S. sec. 477 amended.] That section four hundred and seventy-seven of the Revised Statutes be amended to read as follows:

"Sec. 477. The salaries of the officers mentioned in the preceding section shall be as follows:

"The Commissioner of Patents, \$5,000 a year.

"The First Assistant Commissioner of Patents, \$4,500 a year.

"The Assistant Commissioner of Patents, \$3,500 a year.

"Five examiners in chief, \$3,500 a year each." [39 Stat. L. 9.]

See the notes to the preceding section 1 of this Act.

For R. S. sec. 477 amended by this section see 5 Fed. Stat. Ann. 412; 7 Fed. Stat. Ann. (2d ed.) 5.

[Sec. 1.] [Application for patent — completion — time limit — R. S. sec. 4894 amended.] Section forty-eight hundred and ninety-four of the Revised Statutes is amended so as to read as follows:

"Sec. 4894. All applications for patents shall be completed and prepared for examination within one year after the filing of the application, and in default thereof, or upon failure of the applicant to prosecute the same within one year after any action therein, of which notice shall have been given to the applicant, they shall be regarded as abandoned by the parties thereto, unless it be shown to the satisfaction of the Commissioner of Patents that such delay was unavoidable: *Provided*. That no application shall be regarded as abandoned which has become the property of the Government of the United States and with respect to which the head of any department of the Government shall have certified to the Commissioner of Patents, within a period of three years, that the invention disclosed therein is important to the armament or defense of the United States: *Provided further*, That within ninety days, and not less than thirty days, before the expiration of any such three-year period the Commissioner of Patents shall, in writing, notify the head of the department interested in any pending application for patent, of the approaching expiration of the three-year period within which any application for patent shall have been pending." [39 Stat. L. 348.]

This is from the Fortifications Appropriation Act of July 6, 1916, ch. 225.

For R. S. sec. 4894, amended by this Act, see 5 Fed. Stat. Ann. 488; 7 Fed. Stat. Ann. (2d ed.) 181.

An Act To extend temporarily the time for filing applications and fees and taking action in the United States Patent Office in favor of nations granting reciprocal rights to United States citizens.

[Act of Aug. 17, 1916, ch. 350, 39 Stat. L. 516.]

[SEC. 1.] [Filing application — extension of time.] That any applicant for letters patent or for the registration of any trade-mark, print, or label, being within the provisions of this Act, if unable on account of the existing and continuing state of war to file any application or pay any official fee or take any required action within the period now limited by

law, shall be granted an extension of nine months beyond the expiration of said period. [39 Stat. L. 516.]

Since this Act relates also to trade-marks, prints, etc., it is repeated under TRADE-MARKS, *post*.

SEC. 2. [Limited to citizens of nations granting reciprocal rights.] That the provisions of this Act shall be limited to citizens or subjects of countries which extend substantially similar privileges to the citizens of the United States, and no extension shall be granted under this Act to the citizens or subjects of any country while said country is at war with the United States. [39 Stat. L. 516.]

SEC. 3. [Operation of Act.] That this Act shall be operative to relieve from default under existing law occurring since August first, nineteen hundred and fourteen, and before the first day of January, nineteen hundred and eighteen, and all applications and letters patent and registrations in the filing or prosecution whereof default has occurred for which this Act grants relief shall have the same force and effect as if said default had not occurred. [39 Stat. L. 516.]

An Act To prevent the publication of inventions by the grant of patents that might be detrimental to the public safety or convey useful information to the enemy, to stimulate invention, and provide adequate protection to owners of patents, and for other purposes.

[Act of Oct. 6, 1917, ch. —, — Stat. L. —.]

[Publication of patent — pendency of war.] That whenever during a time when the United States is at war the publication of an invention by the granting of a patent might, in the opinion of the Commissioner of Patents, be detrimental to the public safety or defense or might assist the enemy or endanger the successful prosecution of the war he may order that the invention be kept secret and withhold the grant of a patent until the termination of the war: *Provided*, That the invention disclosed in the application for said patent may be held abandoned upon it being established before or by the commissioner that in violation of said order said invention has been published or that an application for a patent therefor has been filed in a foreign country by the inventor or his assigns or legal representatives, without the consent or approval of the Commissioner of Patents, or under a license of the Secretary of Commerce as provided by law.

When an applicant whose patent is withheld as herein provided and who faithfully obeys the order of the Commissioner of Patents above referred to shall tender his invention to the Government of the United States for its use, he shall, if and when he ultimately received a patent, have the right to sue for compensation in the Court of Claims, such right to compensation to begin from the date of the use of the invention by the Government. [— Stat. L. —.]

[Recovery for unlicensed use of patent by United States — claims — defenses — patents by government employees — former Act amended.] The Act entitled "An Act to provide additional protection for the owners of patents of the United States, and for other purposes," approved June twenty-fifth, nineteen hundred and ten, shall be, and the same is hereby, amended to read as follows, namely:

"That whenever an invention described in and covered by a patent of the United States shall hereafter be used or manufactured by or for the United States without license of the owner thereof or lawful right to use or manufacture the same, such owner's remedy shall be by suit against the United States in the Court of Claims for the recovery of his reasonable and entire compensation for such use and manufacture: *Provided, however,* That said Court of Claims shall not entertain a suit or award compensation under the provisions of this Act where the claim for compensation is based on the use or manufacture by or for the United States of any article heretofore owned, leased, used by, or in the possession of the United States: *Provided further,* That in any such suit the United States may avail itself of any and all defenses, general or special, that might be pleaded by a defendant in an action for infringement, as set forth in Title Sixty of the Revised Statutes, or otherwise: *And provided further,* That the benefits of this Act shall not inure to any patentee who, when he makes such claim, is in the employment or service of the Government of the United States, or the assignee of any such patentee; nor shall this Act apply to any device discovered or invented by such employee during the time of his employment or service." [— *Stat. L.* —]

This is from the Naval Appropriation Act of July 1, 1918, ch. —.

For the Act of June 25, 1910, ch. 423, amended by the text, see 1912 Supp. Fed. Stat. Ann. 286; 7 Fed. Stat. Ann. (2d ed.) 375.

PENAL LAWS

Act of May 7, 1917, ch. —, 579.

Enlisting in Foreign Service — Penal Laws, Sec. 10, Amended, 579.

Act of June 15, 1917, ch. —, 579.

Sec. 8. Military Expeditions against People at Peace with United States — Penal Laws, Sec. 13, Amended, 579.

10. Compelling Foreign Vessels to Depart — Penal Laws, Sec. 15, Amended, 579.

Act of March 4, 1917, ch. 180, 580.

Trespassing on, Injuring, etc., Military Works — Violating Regulations within Established Defensive Sea Areas — Penal Laws, Sec. 44, Amended, 580.

Act of May 22, 1917, ch. —, 580.

Sec. 19. Trespassing on, Injuring, etc., Military Works — Violating Regulations within Established Defensive Sea Areas — Penal Laws, Sec. 44, Amended, 580.

Act of May 18, 1916, ch. 126, 581.

Sec. 10. Letter Boxes and Mail Therein — Injury to — Theft — Penal Laws, Sec. 198, Amended, 581.

CROSS-REFERENCES

See **CRIMINAL LAW; NAVY; PRESIDENT; PUBLIC LANDS**

An Act To amend section ten of chapter two of the Criminal Code

[*Act of May 7, 1917, ch. —, — Stat. L. —.*]

[**Enlisting in foreign service—Penal Laws, sec. 10 amended.**] That section 10 of chapter two of an Act entitled "An Act to codify, revise, and amend the penal laws of the United States," approved March fourth, nineteen hundred and nine, be amended so as to read as follows:

"SEC. 10. Whoever, within the territory or jurisdiction of the United States, enlists or enters himself, or hires or retains another person to enlist or enter himself, or to go beyond the limits or jurisdiction of the United States with intent to be enlisted or entered in the service of any foreign prince, State, colony, district, or people as a soldier or as a marine or seaman on board of any vessel of war, letter of marque, or privateer shall be fined not more than \$1,000 and imprisoned not more than three years: *Provided*, That this section shall not apply to citizens or subjects of any country engaged in war with a country with which the United States is at war, unless such citizen or subject of such foreign country shall hire or solicit a citizen of the United States to enlist or go beyond the jurisdiction of the United States with intent to enlist or enter the service of a foreign country. Enlistments under this proviso shall be under regulations prescribed by the Secretary of War." [*— Stat. L. —.*]

For Penal Laws, § 10, amended by this Act, see 1909 Supp. Fed. Stat. Ann. 407; 7 Fed. Stat. Ann. (2d ed.) 430.

SEC. 8. [**Military expeditions against people at peace with United States—Penal Laws, sec. 13 amended.**] Section thirteen of the Act entitled "An Act to codify, revise, and amend the penal laws of the United States," approved March fourth, nineteen hundred and nine, is hereby amended so as to read as follows:

"SEC. 13. Whoever, within the territory or jurisdiction of the United States or of any of its possessions, knowingly begins or sets on foot or provides or prepares a means for or furnishes the money for, or who takes part in, any military or naval expedition or enterprise to be carried on from thence against the territory or dominion of any foreign prince or state, or of any colony, district, or people with whom the United States is at peace, shall be fined not more than \$3,000 or imprisoned not more than three years, or both." [*— Stat. L. —.*]

The foregoing section 8 and the following section 10 are a part of Title IX of the Espionage Act of June 15, 1917, ch. —, entitled "An Act to punish acts of interference with the foreign relations, the neutrality, and the foreign commerce of the United States, to punish espionage, and better to enforce the criminal laws of the United States, and for other purposes."

For Penal Laws, § 13, amended by this section, see 1909 Supp. Fed. Stat. Ann. 403; 7 Fed. Stat. Ann. (2d ed.) 460.

SEC. 10. [**Compelling foreign vessels to depart—Penal Laws, sec. 15 amended.**] Section fifteen of the Act entitled "An Act to codify, revise,

and amend the penal laws of the United States," approved March fourth, nineteen hundred and nine, is hereby amended so as to read as follows:

"SEC. 15. It shall be lawful for the President to employ such part of the land or naval forces of the United States, or of the militia thereof, as he may deem necessary to compel any foreign vessel to depart from the United States or any of its possessions in all cases in which, by the law of nations or the treaties of the United States, it ought not to remain, and to detain or prevent any foreign vessel from so departing in all cases in which, by the law of nations or the treaties of the United States, it is not entitled to depart." [— *Stat. L.* —.]

See the note to the preceding section 8 of this Act.

For Penal Laws, § 15, amended by this section, see 1909 Supp. Fed. Stat. Ann. 409; 7 Fed. Stat. Ann. (2d ed.) 481.

[**Trespassing on, injuring, etc., military works — violating regulations within established defensive sea areas — Penal Laws, sec. 44 amended.**]

* * * That section forty-four of the Act entitled "An Act to codify, revise, and amend the penal laws of the United States," approved March fourth, nineteen hundred and nine, be, and the same is hereby, amended to read as follows:

"SEC. 44. Whoever shall willfully trespass upon, injure, or destroy any of the works or property or material of any submarine mine or torpedo or fortification or harbor-defense system owned or constructed or in process of construction by the United States, or shall willfully interfere with the operation or use of any such submarine mine, torpedo, fortification, or harbor-defense system, or shall knowingly, willfully, or wantonly violate any duly authorized and promulgated order or regulation of the President governing persons or vessels within the limits of defensive sea areas, which defensive sea areas are hereby authorized to be established by order of the President from time to time as may be necessary in his discretion for purposes of national defense, shall be punished on conviction thereof in a district or circuit court of appeals of the United States for the district or circuit in which the offense is committed, or into which the offender is first brought, by a fine of not more than \$5,000, or by imprisonment for a term not exceeding five years, or by both, in the discretion of the court." [39 *Stat. L.* 1194.]

This is from the Naval Appropriation Act of March 4, 1917, ch. 180.

For Penal Laws, § 44, amended by this Act, see 1909 Supp. Fed. Stat. Ann. 417; 7 Fed. Stat. Ann. (2d ed.) 610.

Said section 44 was subsequently amended by the Act of May 22, 1917, ch. —, § 19, given in the following paragraph of the text.

SEC. 19. [**Trespassing on, injuring, etc., military works — violating regulations within established defensive sea areas — Penal Laws, sec. 44 amended.**] That section forty-four of the Act entitled "An Act to codify, revise, and amend the penal laws of the United States," approved March fourth, nineteen hundred and nine, as amended by an Act entitled "An Act making appropriation for the naval service for the fiscal year ending

June thirtieth, nineteen hundred and eighteen, and for other purposes," approved March fourth, nineteen hundred and seventeen, be, and is hereby, amended by adding the following to said section:

"*Provided*, That offenses hereunder committed within the Canal Zone or within any defensive sea areas which the President is authorized to establish by said section, shall be cognizable in the District Court of the Canal Zone, and jurisdiction is hereby conferred upon said court to hear and determine all such cases arising under said section and to impose the penalties therein provided for the violation of any of the provisions of said section." [— *Stat. L.* —.]

This is from the Act of May 22, 1917, ch. —, providing for the temporary increase of the Navy and Marine Corps and for other purposes.

For Penal Laws, § 44, amended by this Act, see 1909 Supp. Fed. Stat. Ann. 417; 7 Fed. Stat. Ann. (2d ed.) 610.

Said section 44 was previously amended by the Act of March 4, 1917, ch. 180, given in the preceding paragraph of the text.

SEC. 10. [Letter boxes and mail therein — injury to — theft — Penal Laws, sec. 198 amended.] That section one hundred and ninety-eight of the Act of March fourth, nineteen hundred and nine (Thirty-fifth Statutes, page eleven hundred and twenty-six), be amended to read as follows:

"That whoever shall willfully or maliciously injure, tear down, or destroy any letter box or other receptacle intended or used for the receipt or delivery of mail on any mail route, or shall break open the same, or shall willfully or maliciously injure, deface, or destroy any mail deposited therein, or shall willfully take or steal such mail from or out of such letter box or other receptacle, or shall willfully aid or assist in any of the aforementioned offenses, shall for every such offense be punished by a fine of not more than \$1,000 or by imprisonment for not more than three years." [39 *Stat. L.* 162, as amended by 39 *Stat. L.* 418.]

The above section 10 is from the Act of May 18, 1916, ch. 126, entitled "An Act to amend the Act approved June twenty-fifth, nineteen hundred and ten, authorizing the postal savings system, and for other purposes."

This Act was amended by inserting after the initial word "That" the words "section one hundred and ninety-eight of the" by the Postal Service Appropriation Act of July 28, 1916, ch. 261, § 1, 39 *Stat. L.* 418, making the Act to read as here given.

For Penal Laws, § 198, amended by this Act, see 1909 Supp. Fed. Stat. Ann. 458; 7 Fed. Stat. Ann. (2d ed.) 775.

PENSIONS

Act of April 27, 1916, ch. 88, 582.

Sec. 1. Army and Navy Medal of Honor Roll — Establishment — Applications, 582.

2. Special Pension — Award to Medal of Honor Men, 583.

3. Special Pension — Amount — Commencement — Continuance — Effect, 583.

4. Persons Having Two or More Medals of Honor — Rank as Affecting Pension, 584.

Act of June 30, 1916, ch. 194, 584.

Medal of Honor Pensioners — Allowances Out of What Payable, 584.

Act of Aug. 29, 1916, ch. 418, 584.

Loyalty — R. S. Sec. 4716 Requiring Repealed, 584.

Act of Sept. 8, 1916, ch. 470, 584.

Sec. 1. Increase of Pensions to Widows and Minors, 584.

2. Reinstatement of Widow Dropped for Remarriage on Becoming Widow, etc. — Conditions — Widows Remarrying, 585.

3. Title to Pension — Commencement — Pension to Children — Effect on Widow, 585.

4. Claim Agent or Attorney — Recognition in Adjudication of Claims — Fees, 586.

Act of March 3, 1917, ch. 170, 586.

Claimant for Pension — Examination Fee, 586.

Act of March 4, 1917, ch. 189, 586.

Sec. 1. Survivors, etc., of Indian Wars, 586.

2. Period of Service — Evidence, 586.

3. Requisite of Loyalty — Applicability of R. S., Sec. 4716, 588.

Act of June 10, 1918, ch. —, 589.

Military or Naval Service During Civil War — Rate of Pension — Agents and Attorneys — Fees — Former Act Amended, 589.

Act of July 16, 1918, ch. —, 589.

Sec. 1. Widows and Minor Children — War with Spain — Philippine Insurrection — Chinese Boxer Rebellion, 589.

2. Prosecution of Claims — Agents and Attorneys — Fees — Withholding Pension Money — Offenses, 590.

CROSS-REFERENCES

See **HEALTH AND QUARANTINE; WAR DEPARTMENT AND MILITARY ESTABLISHMENT**

An Act To establish in the War Department and in the Navy Department, respectively, a roll designated as "the Army and Navy medal of honor roll," and for other purposes.

[*Act of April 27, 1916, ch. 88, 39 Stat. L. 53.*]

[SEC. 1.] [Army and navy medal of honor roll — establishment — applications.] That there is hereby established in the War Department and Navy Department, respectively, a roll designated as "the Army and Navy medal of honor roll." Upon written application made to the Secretary of the proper department, and subject to the conditions and requirements hereinafter contained, the name of each surviving person who has served in the military or naval service of the United States in any war, who has attained or shall attain the age of sixty-five years, and who has been awarded a medal of honor for having in action involving actual conflict with an enemy distinguished himself conspicuously by gallantry or intrepidity, at the risk of his life, above and beyond the call of duty, and who was honorably discharged from service by muster out, resignation, or otherwise, shall be, by the Secretary of the proper department, entered and recorded on said roll. Applications for entry on said roll shall be made

in such form and under such regulations as shall be prescribed by the War Department and Naval Department, respectively, and proper blanks and instructions shall be, by the proper Secretary, furnished without charge upon request made by any person claiming the benefits of this Act. [39 Stat. L. 53.]

SEC. 2. [Special pension — award to medal of honor men.] That it shall be the duty of the Secretary of War and of the Secretary of the Navy to carry this Act into effect and to decide whether each applicant, under this Act, in his department is entitled to the benefit of this Act. If the official award of the medal of honor to the applicant, or the official notice to him thereof, shall appear to show that the medal of honor was awarded to the applicant for such an act as is required by the provisions of this Act, it shall be deemed sufficient to entitle the applicant to such special pension without further investigation. Otherwise all official correspondence, orders, reports, recommendations, requests, and other evidence now on file in any public office or department shall be considered. A certificate of service and of the act of heroism, gallantry, bravery, or intrepidity for which the medal of honor was awarded, and of enrollment under this Act, and of the right of the special pensioner to be entitled to and to receive the special pension herein granted, shall be furnished each person whose name shall be so entered on said roll. The Secretary of War and the Secretary of the Navy shall deliver to the Commissioner of Pensions a certified copy of each of such of said certificates as he may issue, as aforesaid, and the same shall be full and sufficient authority to the Commissioner of Pensions for the payment by him to the beneficiary named in each such certificate the special pension herein provided for. [39 Stat. L. 54.]

SEC. 3. [Special pension — amount — commencement — continuance — effect.] That each such surviving person whose name shall have been entered on said roll in accordance with this Act shall be entitled to and shall receive and be paid by the Commissioner of Pensions in the Department of the Interior, out of any moneys in the Treasury of the United States not otherwise appropriated, a special pension of \$10 per month for life, payable quarter yearly. The Commissioner of Pensions shall make all necessary rules and regulations for making payment of such special pensions to the beneficiaries thereof.

Such special pension shall begin on the day that such person shall file his application for enrollment on said roll in the office of the Secretary of War or of the Secretary of the Navy after the passage and approval of this Act, and shall continue during the life of the beneficiary.

Such special pension shall not deprive any such special pensioner of any other pension or of any benefit, right, or privilege to which he is or may hereafter be entitled under any existing or subsequent law, but shall be in addition thereto.

The special pension allowed under this Act shall not be subject to any attachment, execution, levy, tax, lien, or detention under any process whatever. [39 Stat. L. 54.]

The appropriation from which these sections are to be paid was prescribed by the Act of June 30 1916, ch. 194, given in the second paragraph of the text following.

SEC. 4. [Persons having two or more medals of honor — rank as affecting pension.] That in case any person has been awarded two or more medals of honor, he shall not be entitled to and shall not receive more than one such special pension.

Rank in the service shall not be considered in applications filed hereunder. [39 Stat. L. 54.]

[Medal of honor pensioners — allowances out of what payable.]
 • • • That all allowances made, or hereafter to be made, to medal of honor pensioners under the Act of Congress approved April twenty-seventh, nineteen hundred and sixteen, shall be paid from the moneys appropriated for the payment of invalid and other pensions, and section three of the said Act of April twenty-seventh, nineteen hundred and sixteen, is amended accordingly. [39 Stat. L. 242.]

This paragraph is from the Pension Appropriation Act of June 30, 1916, ch. 194. The Act of April 27, 1916, ch. 88, § 3, mentioned in the text, is given in the second preceding paragraph of the text.

[SEC. 1.] [Loyalty — R. S. sec. 4716 requiring repealed.] • • • That section forty-seven hundred and sixteen of the Revised Statutes be, and the same is hereby, repealed. [39 Stat. L. 649.]

This is from the Army Appropriation Act of August 29, 1916, ch. 418.

For R. S. sec. 4716, repealed by the text, see 5 Fed. Stat. Ann. 642; 7 Fed. Stat. Ann. (2d ed.) 1027.

The provisions of said R. S. sec. 4716 were as follows:

"Sec. 4716. No money on account of pensions shall be paid to any person, or to the widow, children, or heirs of any deceased person, who in any manner voluntarily engaged in, or aided or abetted, the late rebellion against the authority of the United States."

An Act To amend an Act entitled "An Act to increase the pensions of widows, minor children and so forth, of deceased soldiers and sailors of the late Civil War, the War with Mexico, the various Indian wars, and so forth, and to grant a pension to certain widows of the deceased soldiers and sailors of the late Civil War," approved April nineteenth, nineteen hundred and eight, and for other purposes.

[Act of Sept. 8, 1916, ch. 470, 39 Stat. L. 844.]

[SEC. 1.] [Increase of pensions to widows and minors.] That from and after the passage of this Act the rate of pension for a widow, now on the roll or hereafter to be placed on the pension roll and entitled to receive a less rate than hereinafter provided, who was the lawful wife of any officer or enlisted man in the Army, Navy, or Marine Corps of the United States, during the period of his service in the Civil War, shall be \$20 per month, and the rate of pension for a widow of an officer or enlisted man of the Army, Navy, or Marine Corps of the United States who served in the Civil War, the War with Mexico, or the War of Eighteen hundred and twelve, now on the roll or hereafter to be placed on the pension roll and entitled to

receive a less rate than hereafter provided, who has reached or shall hereafter reach the age of seventy years shall be \$20 per month; and nothing herein shall be construed to affect the existing allowance of \$2 per month for each child under the age of sixteen years and for each helpless child; and all Acts or parts of Acts inconsistent with the provisions of this Act are hereby repealed: *Provided, however*, That this Act shall not be so construed as to reduce any pension under any Act, public or private. [39 Stat. L. 844.]

For the Act of April 19, 1908, ch. 147, mentioned in the title of this Act, see 1909 Supp. Fed. Stat. Ann. 508; 7 Fed. Stat. Ann. (2d ed.) 1109.

SEC. 2. [Reinstatement of widow dropped for remarriage on becoming widow, etc.—conditions—widows remarrying.] That any widow of an officer or enlisted man who served in the Army, Navy, or Marine Corps of the United States during the Civil War whose name was placed or shall hereafter be placed on the pension roll, under any existing law, and whose name has been or shall hereafter be dropped from said pension roll by reason of her marriage to another person who has since died or shall hereafter die, or from whom she has been heretofore or shall be hereafter divorced upon her own application and without fault on her part, shall be entitled to have her name again placed on the pension roll at the rate allowed by the law under which she was formerly pensioned, and the law or laws amendatory thereof, unless she be entitled to a greater rate of pension under the provisions of section one of this Act, such pension to commence from the date of filing her application in the Bureau of Pensions after the passage of this Act: *Provided, however*, That where the pension of said widow on her second or subsequent marriage has accrued to a helpless or idiotic child, or a child or children under the age of sixteen years, she shall not be entitled to renewal under this Act unless said helpless or idiotic child, or child or children under sixteen years of age, be then a member or members of her family and cared for by her, and upon the renewal of pension to said widow payment of pension to said child or children shall cease: *And provided further*, That the provisions of this Act shall be extended to those widows, otherwise entitled, whose husbands died of wounds, injuries or disease incurred during the period of their military or naval service, but who were deprived of pension under the Act of March third, eighteen hundred and sixty-five, because of their failure to draw any pensions by reason of their remarriage, and to any person who was lawfully married to an officer or enlisted man, who served in the Army, Navy, or Marine Corps of the United States during the Civil War and was honorably discharged therefrom and has since deceased and who, having remarried since his death is again a widow, or has been divorced from her last husband upon her own application without fault on her part and who, otherwise entitled, was barred by reason of such remarriage from receiving pension under any existing law. [39 Stat. L. 845.]

The Act mentioned in this section is the Act of March 3, 1865, ch. 84, 13 Stat. L. 499

SEC. 3. [Title to pension—commencement—pension to children—effect on widow.] That any widow, as described in section two of the Act

approved April nineteenth, nineteen hundred and eight, who married the soldier or sailor prior to June twenty-seventh, nineteen hundred and five, shall have title to pension under the provisions of said section of said Act, to commence from the date of filing her application in the Bureau of Pensions after the passage of this Act: *Provided, however,* That where a pension has been granted to a soldier's or sailor's helpless or idiotic child or children, or child or children under the age of sixteen years, his widow shall not be entitled to pension under this section, unless the pension to such child or children has terminated, or unless such child or children be a member or members of her family and cared for by her, and upon allowance of pension to the widow, payment of pension to such child or children shall cease. [39 Stat. L. 845.]

For the Act of April 19, 1908, ch. 147, § 2, mentioned in the text, see 1909 Supp. Fed. Stat. Ann. 509; 7 Fed. Stat. Ann. (2d ed.) 1109.

SEC. 4. [Claim agent or attorney—recognition in adjudication of claims—fees.] That no claim agent or attorney shall be recognized in the adjudication of claims under the first section of this Act, nor shall any claim agent or attorney be recognized in the adjudication of claims under the second section of this Act for renewal of pension previously allowed, and in claims for original pension under section two of this Act no greater sum than \$10 shall be allowed for services in preparing, presenting, or prosecuting such claim, which sum shall be paid only upon the order of the Commissioner of Pensions under such rules and regulations as he may deem proper to make. [39 Stat. L. 845.]

[Claimant for pension—examination fee.] * * * That hereafter the fee for each examination made at the claimant's residence by an examining surgeon of the Bureau of Pensions for use in a pension claim shall be \$4 and in lieu of actual traveling expenses there shall be paid 10 cents per mile for the distance actually traveled each way, but not exceeding the distance by the most direct route between the surgeon's office and the claimant's home. [39 Stat. L. 1132.]

This is from the Pension Appropriation Act of March 3, 1917, ch. 170.

An Act To pension the survivors of certain Indian Wars from January first, eighteen hundred and fifty-nine, to January, eighteen hundred and ninety-one, inclusive, and for other purposes.

[Act of March 4, 1917, ch. 189, 39 Stat. L. 1199.]

[SEC. 1.] **[Survivors, etc., of Indian wars.]** That the provisions, limitations, and benefits of an Act entitled "An Act granting pensions to

survivors of the Indian wars of eighteen hundred and thirty-two to eighteen hundred and forty-two, inclusive, known as the Black Hawk War, Creek War, Cherokee disturbances, and the Seminole War," approved July twenty-seventh, eighteen hundred and ninety-two, as amended on February nineteenth, nineteen hundred and thirteen, be, and the same are hereby, extended from the date of the passage of this Act to the surviving officers and enlisted men of the Texas volunteers who served in defense of the frontier of that State against Indian depredations from January first, eighteen hundred and fifty-nine, to January first, eighteen hundred and sixty-one, inclusive, and from the year eighteen hundred and sixty-six to the year eighteen hundred and seventy-seven, inclusive, and to the surviving officers and enlisted men, including militia and volunteers of the military service of the United States, who have reached the age of sixty-two years, and who served for thirty days in the campaign in southern Oregon and Idaho and northern parts of California and Nevada from eighteen hundred and sixty-five to eighteen hundred and sixty-eight, inclusive; the campaign against the Sioux in Minnesota and the Dakotas in eighteen hundred and sixty-two and eighteen hundred and sixty-three, and the campaigns against the Sioux in Wyoming in eighteen hundred and sixty-five to eighteen hundred and sixty-eight; to the following organizations of the First Regiment Nebraska Militia engaged in fighting Indians and guarding United States mails on the western frontier: Company A, First Regiment, First Brigade Nebraska Militia, who served from August thirtieth, eighteen hundred and sixty-four, to November twelfth, eighteen hundred and sixty-four; Company B, First Regiment Nebraska Militia, who served from August thirteenth, eighteen hundred and sixty-four, to February thirteenth, eighteen hundred and sixty-five; Company C, First Regiment, Second Brigade Nebraska Militia, who served from August twenty-fourth, eighteen hundred and sixty-four, to February seventh, eighteen hundred and sixty-five; to Captain Edward P. Childs's artillery detachment, Nebraska Militia, who served from August thirtieth, eighteen hundred and sixty-four, to November twelfth, eighteen hundred and sixty-four; and Company A, First Regiment, Second Brigade Nebraska Militia, who served from August twelfth, eighteen hundred and sixty-four, to December twenty-fourth, eighteen hundred and sixty-four; the campaign against the Cheyennes, Arapahoes, Kiowas, and Comanches in Kansas, Colorado, and Indian Territory from eighteen hundred and sixty-seven to eighteen hundred and sixty-nine, inclusive; the Modoc War of eighteen hundred and seventy-two and eighteen hundred and seventy-three; the campaign against the Apaches of Arizona and New Mexico, or either of them, in eighteen hundred and seventy-three; the campaign against the Kiowas, Comanches, and Cheyennes in Kansas, Colorado, Texas, Indian Territory, and New Mexico in eighteen hundred and seventy-four and eighteen hundred and seventy-five; the campaign against the Northern Cheyennes and Sioux in eighteen hundred and seventy-six and eighteen hundred and seventy-seven; the Nez Perce War of eighteen hundred and seventy-seven; the Bannock War of eighteen hundred and seventy-eight; the campaign against the Northern Cheyennes in eighteen hundred and seventy-eight and eighteen hundred and seventy-nine; the campaigns in the Black Hawk Indian war in Utah from eighteen hundred and sixty-five

to eighteen hundred and sixty-seven, inclusive; the campaign against the Ute Indians in Colorado and Utah, from September, eighteen hundred and seventy-nine, to November, eighteen hundred and eighty, inclusive; the campaign against the Apache Indians in Arizona and New Mexico, or either of them, in eighteen hundred and eighty-five and eighteen hundred and eighty-six; and the campaign against the Sioux Indians in South Dakota, from November, eighteen hundred and ninety, to January, eighteen hundred and ninety-one, inclusive; and also to include the surviving widows of said officers and enlisted men who shall have married said survivor prior to the passage of this Act: *Provided*, That such widows have not remarried: *Provided further*, That this Act shall extend also to the surviving officers and enlisted men of the organization known as Tyler's Rangers, recruited at Black Hawk, Colorado, eighteen hundred and sixty-four, for services against the Indians: *Provided further*, That if any certain one of the said campaigns did not cover a period of thirty days, the provisions of this Act shall apply to those who served during the entire period of said campaign: *Provided further*, That where there is no record of enlistment or muster into the service of the United States in any of the wars mentioned in this Act, the record of pay by the United States shall be accepted as full and satisfactory proof of such enlistment and service: *And provided further*, That all contracts heretofore made between the beneficiaries under this Act and pension attorneys and claim agents are hereby declared null and void. [39 Stat. L. 1199.]

For the Act of July 27, 1892, ch. 277, mentioned in the text, see 5 Fed. Stat. Ann. 659; 7 Fed. Stat. Ann. (2d ed.) 1092.

For the Act of Feb. 19, 1913, ch. 59, mentioned in the text, see 1914 Supp. Fed. Stat. Ann. 307; 7 Fed. Stat. Ann. (2d ed.) 1115.

SEC. 2. [Period of service — evidence.] That the period of service performed by beneficiaries under this Act shall be determined by reports from the records of the War Department, where there is such a record, and by the reports from the records of the Treasury Department showing payment by the United States where there is no record of regular enlistment or muster into the United States military service: *Provided*, That when there is no record of service or payment for same in the War Department or Treasury Department, the applicant may establish the service by satisfactory evidence from the muster rolls on file in the several State or Territorial archives: *And provided further*, That the want of a certificate of discharge shall not deprive any applicant of the benefits of this Act. [39 Stat. L. 1200.]

SEC. 3. [Requisite of loyalty — applicability of R. S. sec. 4716.] That the provisions of section forty-seven hundred and sixteen of the Revised Statutes shall not apply to applicants for pension under this Act. [39 Stat. L. 1201.]

For R. S. sec. 4716 mentioned in the text see 5 Fed. Stat. Ann. 642; 7 Fed. Stat. Ann. (2d ed.) 1027.

Said R. S. sec. 4716 was repealed by the Act of Aug. 29, 1916, ch. 418, § 1, *supra*, p. 584, and is noted thereunder.

An Act To amend an Act entitled "An Act granting pensions to certain enlisted men, soldiers, and officers who served in the Civil War and the War with Mexico," approved May eleventh, nineteen hundred and twelve.

[*Act of June 10, 1918, ch. —, — Stat. L. —.*]

[**Military or naval service during Civil War — rate of pension — agents and attorneys — fees — former Act amended.**] That the general pension Act of May eleventh, nineteen hundred and twelve, is hereby amended by adding a new section, to read as follows:

"SEC. 6. That from and after the passage of this Act the rate of pension for any person who served ninety days or more in the military or naval service of the United States during the Civil War, now on the roll or hereafter to be placed on the pension roll and entitled to receive a less rate than hereinafter provided, shall be \$30 per month. In case such a person has reached the age of seventy-two years and served six months, the rate shall be \$32 per month; one year, \$35 per month; one and a half years, \$38 per month; two years or over, ~~\$40~~ per month: *Provided*, That this Act shall not be so construed as to reduce any pension under any Act, public or private: *Provided further*, That no pension attorney, claim agent, or other person, shall be entitled to receive any compensation for presenting any claim to the Bureau of Pensions under this Act, except in applications for original pension by persons who have not heretofore received a pension." [*— Stat. L. —.*]

For the Act of May 11, 1912, ch. 123, amended by this Act see 1012 Supp. Fed. Stat. Ann. 307; 7 Fed. Stat. Ann. (2d ed.) 1111.

An Act To pension widows and minor children of officers and enlisted men who served in the War with Spain, Philippine insurrection, or in China.]

[*Act of July 16, 1918, ch. —, — Stat. L. —.*]

[**SEC. 1.**] [**Widows and minor children — War with Spain — Philippine insurrection — Chinese Boxer Rebellion.**] That from and after the passage of this Act if any volunteer officer or enlisted man who served ninety days or more in the Army, Navy, or Marine Corps of the United States, during the War with Spain or the Philippine insurrection, between April twenty-first, eighteen hundred and ninety-eight, and July fourth, nineteen hundred and two, inclusive, service to be computed from date of enlistment to date of discharge, or any officer or enlisted man of the Regular Establishment who rendered ninety days or more actual military or naval service in the United States Army, Navy, or Marine Corps in the War with Spain or the Philippine insurrection between April twenty-first, eighteen hundred and ninety-eight, and July fourth, nineteen hundred and two, inclusive, or as a participant in the Chinese Boxer rebellion campaign between June sixteenth, nineteen hundred, and October first, nineteen hundred, and who has been honorably discharged therefrom, has died or shall hereafter die leaving a widow without means of support other than her

daily labor, and an actual net income not exceeding \$250 per year, or leaving a minor child or children under the age of sixteen years, such widow shall upon due proof of her husband's death, without proving his death to be the result of his Army or Navy service, be placed on the pension roll from the date of the filing of her application therefor under this Act, at the rate of \$12 per month during her widowhood, and shall also be paid \$2 per month for each child of such officer or enlisted man under sixteen years of age, and in case of the death or remarriage of the widow, leaving a child or children of such officer or enlisted man under the age of sixteen years, such pension shall be paid such child or children until the age of sixteen: *Provided*, That in case a minor child is insane, idiotic, or otherwise permanently helpless, the pension shall continue during the life of said child, or during the period of such disability, and shall commence from the date of application therefor after the passage of this Act: *Provided further*, That said widow shall have married said officer or enlisted man previous to the passage of this Act: *Provided, however*, That this Act shall not be so construed as to reduce any pension under any Act, public or private. [— *Stat. L.* —.]

SEC. 2. [Prosecution of claims — agents and attorneys — fees — withholding pension money — offenses] That no agent, attorney, or other person engaged in preparing, presenting, or prosecuting any claim under the provisions of this Act shall, directly or indirectly, contract for, demand, receive, or retain for such services in preparing, presenting, or prosecuting such claim a sum greater than \$10, which sum shall be payable only on the order of the Commissioner of Pensions; and any person who shall violate any of the provisions of this section, or shall wrongfully withhold from the pensioner or claimant the whole or any part of a pension or claim allowed or due such pensioner or claimant under this Act, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall, for each and every offense, be fined not exceeding \$500 or be imprisoned not exceeding one year, or both, in the discretion of the court. [— *Stat. L.* —.]

PERJURY

See PUBLIC LANDS.

PHILIPPINE ISLANDS

Act of July 1, 1918, ch. 209, 591.

Sec. 1 *Acts of Philippine Legislature — Ratification — Internal-Revenue Taxes — Tonnage Tax, 591.*

Tonnage Taxes and Light Dues — Exemption of Vessels in Ports of United States, 592.

Act of Aug. 29, 1916, ch. 416, 592.

Sec. 1. *Philippine Government Act — Preamble — Territory Affected*, 592.

2. *Citizenship*, 593.
3. *Bill of Rights*, 593.
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Act of June 4, 1918, ch. —, 606.

Taxes Imposed by Philippine Legislature — Ratification, 606.

CROSS-REFERENCES

See *IMMIGRATION; INTERNAL REVENUE; NAVAL ACADEMY.*

..[SEC. 1.] [Acts of Philippine legislature — ratification — internal-revenue taxes — tonnage tax.] * * * That the internal-revenue taxes imposed by the Philippine Legislature under the law enacted by that body

on December twenty-first, nineteen hundred and fifteen, as amended by the law enacted by that body on February fourth, nineteen hundred and sixteen, and the tonnage tax on vessels engaged in foreign trade enacted by that body on February fourth, nineteen hundred and sixteen, are hereby legalized and ratified, and the collection of all such taxes heretofore or hereafter is hereby legalized, ratified, and confirmed as fully to all intents and purposes as if the same had by prior Act of Congress been specifically authorized and directed. [39 Stat. L. 286.]

This and the following paragraph of the text are from the Sundry Civil Appropriations Act of July 1, 1918, ch. 209.

See also the Act of June 4, 1916, ch. —, *infra*, p. 606.

[Tonnage taxes and light dues—exemption of vessels in ports of United States.] * * * Vessels owned by citizens of the Philippine Islands and documented as such by the government of said islands shall hereafter be exempt in ports of the United States from payment of tonnage taxes and light dues; and the Secretary of the Treasury is hereby authorized, upon certification by the Commissioner of Navigation, to refund, out of any money in the Treasury not otherwise appropriated, tonnage taxes and light dues imposed upon vessels owned and documented as aforesaid entering ports of the United States since August first, nineteen hundred and fourteen: *Provided*, That nothing contained herein shall be construed as exempting said vessels from any taxes or dues imposed by the government of the Philippine Islands. [39 Stat. L. 286.]

See the note to the preceding paragraph of the text.

An Act To declare the purpose of the people of the United States as to the future political status of the people of the Philippine Islands, and to provide a more autonomous government for those islands.

[Act of Aug. 29, 1916, ch. 416, 39 Stat. L. 545.]

[SEC. 1.] **[Philippine Government Act—preamble—territory affected.]**

Whereas it was never the intention of the people of the United States in the incipency of the War with Spain to make it a war of conquest or for territorial aggrandizement; and

Whereas it is, as it has always been, the purpose of the people of the United States to withdraw their sovereignty over the Philippine Islands and to recognize their independence as soon as a stable government can be established therein; and

Whereas for the speedy accomplishment of such purpose it is desirable to place in the hands of the people of the Philippines as large a control of their domestic affairs as can be given them without, in the meantime, impairing the exercise of the rights of sovereignty by the people of the United States, in order that, by the use and exercise of popular franchise and governmental powers, they may be the better prepared to fully assume the responsibilities and enjoy all the privileges of complete independence: Therefore

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the provisions of this Act and the name "The Philippines" as used in this Act shall apply to and include the Philippine Islands ceded to the United States Government by the treaty of peace concluded between the United States and Spain on the eleventh day of April, eighteen hundred and ninety-nine, the boundaries of which are set forth in Article III of said treaty, together with those islands embraced in the treaty between Spain and the United States concluded at Washington on the seventh day of November, nineteen hundred. [39 Stat. L. 545.]

For the treaty of April 11, 1899, mentioned in the text, see 30 Stat. L. 1754.

For the treaty of Nov. 7, 1900, mentioned in the text, see 31 Stat. L. 1942.

SEC. 2. [Citizenship.] That all inhabitants of the Philippine Islands who were Spanish subjects on the eleventh day of April, eighteen hundred and ninety-nine, and then resided in said islands, and their children born subsequent thereto, shall be deemed and held to be citizens of the Philippine Islands, except such as shall have elected to preserve their allegiance to the Crown of Spain in accordance with the provisions of the treaty of peace between the United States and Spain, signed at Paris December tenth, eighteen hundred and ninety-eight, and except such others as have since become citizens of some other country: *Provided, That the Philippine Legislature, herein provided for, is hereby authorized to provide by law for the acquisition of Philippine citizenship by those natives of the Philippine Islands who do not come within the foregoing provisions, the natives of the insular possessions of the United States, and such other persons residing in the Philippine Islands who are citizens of the United States, or who could become citizens of the United States under the laws of the United States if residing therein. [39 Stat. L. 546.]*

SEC. 3. [Bill of rights.] That no law shall be enacted in said islands which shall deprive any person of life, liberty, or property without due process of law, or deny to any person therein the equal protection of the laws. Private property shall not be taken for public use without just compensation.

That in all criminal prosecutions the accused shall enjoy the right to be heard by himself and counsel, to demand the nature and cause of the accusation against him, to have a speedy and public trial, to meet the witnesses face to face, and to have compulsory process to compel the attendance of witnesses in his behalf.

That no person shall be held to answer for a criminal offense without due process of law; and no person for the same offense shall be twice put in jeopardy of punishment, nor shall be compelled in any criminal case to be a witness against himself.

That all persons shall before conviction be bailable by sufficient sureties, except for capital offenses.

That no law impairing the obligation of contracts shall be enacted.

That no person shall be imprisoned for debt.

That the privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion, insurrection, or invasion the public safety

on December twenty-first, nineteen hundred and fifteen, as amended by the law enacted by that body on February fourth, nineteen hundred and sixteen, and the tonnage tax on vessels engaged in foreign trade enacted by that body on February fourth, nineteen hundred and sixteen, are hereby legalized and ratified, and the collection of all such taxes heretofore or hereafter is hereby legalized, ratified, and confirmed as fully to all intents and purposes as if the same had by prior Act of Congress been specifically authorized and directed. [39 Stat. L. 286.]

This and the following paragraph of the text are from the Sundry Civil Appropriations Act of July 1, 1918, ch. 209.

See also the Act of June 4, 1918, ch. —, *infra*, p. 606.

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See the note to the preceding paragraph of the text.

An Act To declare the purpose of the people of the United States as to the future political status of the people of the Philippine Islands, and to provide a more autonomous government for those islands.

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[SEC. 1.] [Philippine Government Act — preamble — territory affected.]

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Whereas it is, as it has always been, the purpose of the people of the United States to withdraw their sovereignty over the Philippine Islands and to recognize their independence as soon as a stable government can be established therein; and

Whereas for the speedy accomplishment of such purpose it is desirable to place in the hands of the people of the Philippines as large a control of their domestic affairs as can be given them without, in the meantime, impairing the exercise of the rights of sovereignty by the people of the United States, in order that, by the use and exercise of popular franchise and governmental powers, they may be the better prepared to fully assume the responsibilities and enjoy all the privileges of complete independence: Therefore

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the provisions of this Act and the name "The Philippines" as used in this Act shall apply to and include the Philippine Islands ceded to the United States Government by the treaty of peace concluded between the United States and Spain on the eleventh day of April, eighteen hundred and ninety-nine, the boundaries of which are set forth in Article III of said treaty, together with those islands embraced in the treaty between Spain and the United States concluded at Washington on the seventh day of November, nineteen hundred. [39 Stat. L. 545.]

For the treaty of April 11, 1899, mentioned in the text, see 30 Stat. L. 1754.
For the treaty of Nov. 7, 1900, mentioned in the text, see 31 Stat. L. 1842.

SEC. 2. [Citizenship.] That all inhabitants of the Philippine Islands who were Spanish subjects on the eleventh day of April, eighteen hundred and ninety-nine, and then resided in said islands, and their children born subsequent thereto, shall be deemed and held to be citizens of the Philippine Islands, except such as shall have elected to preserve their allegiance to the Crown of Spain in accordance with the provisions of the treaty of peace between the United States and Spain, signed at Paris December tenth, eighteen hundred and ninety-eight, and except such others as have since become citizens of some other country: *Provided*, That the Philippine Legislature, herein provided for, is hereby authorized to provide by law for the acquisition of Philippine citizenship by those natives of the Philippine Islands who do not come within the foregoing provisions, the natives of the insular possessions of the United States, and such other persons residing in the Philippine Islands who are citizens of the United States, or who could become citizens of the United States under the laws of the United States if residing therein. [39 Stat. L. 546.]

SEC. 3. [Bill of rights.] That no law shall be enacted in said islands which shall deprive any person of life, liberty, or property without due process of law, or deny to any person therein the equal protection of the laws. Private property shall not be taken for public use without just compensation.

That in all criminal prosecutions the accused shall enjoy the right to be heard by himself and counsel, to demand the nature and cause of the accusation against him, to have a speedy and public trial, to meet the witnesses face to face, and to have compulsory process to compel the attendance of witnesses in his behalf.

That no person shall be held to answer for a criminal offense without due process of law; and no person for the same offense shall be twice put in jeopardy of punishment, nor shall be compelled in any criminal case to be a witness against himself.

That all persons shall before conviction be bailable by sufficient sureties, except for capital offenses.

That no law impairing the obligation of contracts shall be enacted.

That no person shall be imprisoned for debt.

That the privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion, insurrection, or invasion the public safety

may require it, in either of which events the same may be suspended by the President, or by the Governor General, wherever during such period the necessity for such suspension shall exist.

That no *ex post facto* law or bill of attainder shall be enacted nor shall the law of primogeniture ever be in force in the Philippines.

That no law granting a title of nobility shall be enacted, and no person holding any office of profit or trust in said islands shall, without the consent of the Congress of the United States, accept any present, emolument, office, or title of any kind whatever from any king, queen, prince, or foreign State.

That excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted.

That the right to be secure against unreasonable searches and seizures shall not be violated.

That slavery shall not exist in said islands; nor shall involuntary servitude exist therein except as a punishment for crime whereof the party shall have been duly convicted.

That no law shall be passed abridging the freedom of speech or of the press, or the right of the people peaceably to assemble and petition the Government for redress of grievances.

That no law shall be made respecting an establishment of religion or prohibiting the free exercise thereof, and that the free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed; and no religious test shall be required for the exercise of civil or political rights. No public money or property shall ever be appropriated, applied, donated, or used, directly or indirectly, for the use, benefit, or support of any sect, church, denomination, sectarian institution, or system of religion, or for the use, benefit, or support of any priest, preacher, minister, or other religious teacher or dignitary as such. Contracting of polygamous or plural marriages hereafter is prohibited. That no law shall be construed to permit polygamous or plural marriages.

That no money shall be paid out of the treasury except in pursuance of an appropriation by law.

That the rule of taxation in said islands shall be uniform.

That no bill which may be enacted into law shall embrace more than one subject, and that subject shall be expressed in the title of the bill.

That no warrant shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the person or things to be seized.

That all money collected on any tax levied or assessed for a special purpose shall be treated as a special fund in the treasury and paid out for such purpose only. [39 Stat. L. 546.]

SEC. 4. [Expenses incurred—liability of government.] That all expenses that may be incurred on account of the Government of the Philippines for salaries of officials and the conduct of their offices and departments, and all expenses and obligations contracted for the internal improvement or development of the islands, not, however, including defenses, barracks, and other works undertaken by the United States, shall, except as otherwise specifically provided by the Congress, be paid by the Government of the Philippines. [39 Stat. L. 547.]

SEC. 5. [Statutory laws of United States — applicability.] That the statutory laws of the United States hereafter enacted shall not apply to the Philippine Islands, except when they specifically so provide, or it is so provided in this Act. [39 Stat. L. 547.]

SEC. 6. [Existing laws — continuance in force.] That the laws now in force in the Philippines shall continue in force and effect, except as altered, amended, or modified herein, until altered, amended, or repealed by the legislative authority herein provided or by Act of Congress of the United States. [39 Stat. L. 547.]

SEC. 7. [Legislative authority to amend, etc., existing laws.] That the legislative authority herein provided shall have power, when not inconsistent with this Act, by due enactment to amend, alter, modify, or repeal any law, civil or criminal, continued in force by this Act as it may from time to time see fit.

This power shall specifically extend with the limitation herein provided as to the tariff to all laws relating to revenue and taxation in effect in the Philippines. [39 Stat. L. 547.]

SEC. 8. [General legislative authority — grant of.] That general legislative power, except as otherwise herein provided, is hereby granted to the Philippine Legislature, authorized by this Act. [39 Stat. L. 547.]

SEC. 9. [Property and rights under control of government of Islands — legislative power — approval of President of United States.] That all the property and rights which may have been acquired in the Philippine Islands by the United States under the treaty of peace with Spain, signed December tenth, eighteen hundred and ninety-eight, except such land or other property as has been or shall be designated by the President of the United States for military and other reservations of the Government of the United States, and all lands which may have been subsequently acquired by the government of the Philippine Islands by purchase under the provisions of sections sixty-three and sixty-four of the Act of Congress approved July first, nineteen hundred and two, except such as may have heretofore been sold and disposed of in accordance with the provisions of said Act of Congress, are hereby placed under the control of the government of said islands to be administered or disposed of for the benefit of the inhabitants thereof, and the Philippine Legislature shall have power to legislate with respect to all such matters as it may deem advisable; but acts of the Philippine Legislature with reference to land of the public domain, timber, and mining, hereafter enacted, shall not have the force of law until approved by the President of the United States: *Provided*, That upon the approval of such an act by the Governor General, it shall be by him forthwith transmitted to the President of the United States, and he shall approve or disapprove the same within six months from and after its enactment and submission for his approval, and if not disapproved within such time it shall become a law the same as if it had been specifically approved: *Provided further*, That where lands in the Philippine Islands have been or may be

reserved for any public purpose of the United States, and, being no longer required for the purpose for which reserved, have been or may be, by order of the President, placed under the control of the government of said islands to be administered for the benefit of the inhabitants thereof, the order of the President shall be regarded as effectual to give the government of said islands full control and power to administer and dispose of such lands for the benefit of the inhabitants of said islands. [39 Stat. L. 547.]

For the Act of July 1, 1902, ch. 140, §§ 63, 64, mentioned in the text, see 5 Fed. Stat. L. 735; 7 Fed. Stat. Ann. (2d ed.) 1148.

SEC. 10. [Tariff laws — trade relations with United States — legislative authority — approval by President of United States.] That while this Act provides that the Philippine government shall have the authority to enact a tariff law the trade relations between the islands and the United States shall continue to be governed exclusively by laws of the Congress of the United States: *Provided*, That tariff acts or acts amendatory to the tariff of the Philippine islands shall not become law until they shall receive the approval of the President of the United States, nor shall any act of the Philippine Legislature affecting immigration or the currency or coinage laws of the Philippines become a law until it has been approved by the President of the United States: *Provided further*, That the President shall approve or disapprove any act mentioned in the foregoing proviso within six months from and after its enactment and submission for his approval, and if not disapproved within such time it shall become a law the same as if it had been specifically approved. [39 Stat. L. 548.]

SEC. 11. [Export duties — taxes and assessments — bond issues.] That no export duties shall be levied or collected on exports from the Philippine Islands, but taxes and assessments on property and license fees for franchises, and privileges, and internal taxes, direct or indirect, may be imposed for the purposes of the Philippine government and the provincial and municipal governments thereof, respectively, as may be provided and defined by acts of the Philippine Legislature, and, where necessary to anticipate taxes and revenues, bonds and other obligations may be issued by the Philippine government or any provincial or municipal government therein, as may be provided by law and to protect the public credit; *Provided, however*, That the entire indebtedness of the Philippine government created by the authority conferred herein shall not exceed at any one time the sum of \$15,000,000, exclusive of those obligations known as friar land bonds, nor that of any province or municipality a sum in excess of seven per centum of the aggregate tax valuation of its property at any one time. [39 Stat. L. 548.]

SEC. 12. [Legislature — creation — composition — powers.] That general legislative powers in the Philippines, except as herein otherwise provided, shall be vested in a legislature which shall consist of two houses, one the senate and the other the house of representatives, and the two houses shall be designated "The Philippine Legislature": *Provided*, That until the Philippine Legislature as herein provided shall have been organized the existing Philippine Legislature shall have all legislative authority

herein granted to the government of the Philippine Islands, except such as may now be within the exclusive jurisdiction of the Philippine Commission, which is so continued until the organization of the legislature herein provided for the Philippines. When the Philippine Legislature shall have been organized, the exclusive legislative jurisdiction and authority exercised by the Philippine Commission shall thereafter be exercised by the Philippine Legislature. [39 Stat. L. 548.]

SEC. 13. [Senate — membership — terms — qualifications.] That the members of the senate of the Philippines, except as herein provided, shall be elected for terms of six and three years, as hereinafter provided, by the qualified electors of the Philippines. Each of the senatorial districts defined as hereinafter provided shall have the right to elect two senators. No person shall be an elective member of the senate of the Philippines who is not a qualified elector and over thirty years of age, and who is not able to read and write either the Spanish or English language, and who has not been a resident of the Philippines for at least two consecutive years and an actual resident of the senatorial district from which chosen for a period of at least one year immediately prior to his election. [39 Stat. L. 549.]

SEC. 14. [House of representatives — membership — terms — qualifications.] That the members of the house of representatives shall, except as herein provided, be elected triennially by the qualified electors of the Philippines. Each of the representative districts hereinafter provided for shall have the right to elect one representative. No person shall be an elective member of the house of representatives who is not a qualified elector and over twenty-five years of age, and who is not able to read and write either the Spanish or English language, and who has not been an actual resident of the district from which elected for at least one year immediately prior to his election: *Provided*, That the members of the present assembly elected on the first Tuesday in June, nineteen hundred and sixteen, shall be the members of the house of representatives from their respective districts for the term expiring in nineteen hundred and nineteen. [39 Stat. L. 549.]

SEC. 15. [Electors — qualifications.] That at the first election held pursuant to this Act, the qualified electors shall be those having the qualifications of voters under the present law; thereafter and until otherwise provided by the Philippine Legislature herein provided for the qualifications of voters for senators and representatives in the Philippines and all officers elected by the people shall be as follows:

Every male person who is not a citizen or subject of a foreign power twenty-one years of age or over (except insane and feeble-minded persons and those convicted in a court of competent jurisdiction of an infamous offense since the thirteenth day of August, eighteen hundred and ninety-eight), who shall have been a resident of the Philippines for one year and of the municipality in which he shall offer to vote for six months next preceding the day of voting, and who is comprised within one of the following classes:

(a) Those who under existing law are legal voters and have exercised the right of suffrage.

(b) Those who own real property to the value of 500 pesos, or who annually pay 30 pesos or more of the established taxes.

(c) Those who are able to read and write either Spanish, English, or a native language. [39 Stat. L. 549.]

SEC. 16. [Senate districts—elections.] That the Philippine Islands shall be divided into twelve senate districts, as follows:

First district: Batanes, Cagayan, Isabela, Ilocos Norte, and Ilocos Sur.

Second district: La Union, Pangasinan, and Zambales.

Third district: Tarlac, Nueva, Ecija, Pampanga, and Bulacan.

Fourth district: Bataan, Rizal, Manila, and Laguna.

Fifth district: Batangas, Mindoro, Tayabas, and Cavite.

Sixth district: Sorsogon, Albay, and Ambos Camarines.

Seventh district: Iloilo and Capiz.

Eighth district: Negros Occidental, Negros Oriental, Antique, and Palawan.

Ninth district: Leyte and Samar.

Tenth district: Cebu.

Eleventh district: Surigao, Misamis, and Bohol.

Twelfth district: The Mountain Province, Baguio, Nueva Vizcaya, and the Department of Mindanao and Sulu.

The representative districts shall be the eighty-one now provided by law, and three in the Mountain Province, one in Nueva Vizcaya, and five in the Department of Mindanao and Sulu.

The first election under the provisions of this Act shall be held on the first Tuesday of October, nineteen hundred and sixteen, unless the Governor General in his discretion shall fix another date not earlier than thirty nor later than sixty days after the passage of this Act: *Provided*, That the Governor General's proclamation shall be published at least thirty days prior to the date fixed for the election, and there shall be chosen at such election one senator from each senate district for a term of three years and one for six years. Thereafter one senator from each district shall be elected from each senate district for a term of six years: *Provided*, That the Governor General of the Philippine Islands shall appoint, without the consent of the senate and without restriction as to residence, senators and representatives who will, in his opinion, best represent the senate district and those representative districts which may be included in the territory not now represented in the Philippine Assembly: *Provided further*, That thereafter elections shall be held only on such days and under such regulations as to ballots, voting, and qualifications of electors as may be prescribed by the Philippine Legislature, to which is hereby given authority to redistrict the Philippine Islands and modify, amend, or repeal any provision of this section, except such as refer to appointive senators and representatives. [39 Stat. L. 549.]

SEC. 17. [Terms of office—vacancies.] That the terms of office of elective senators and representatives shall be six and three years, respectively, and shall begin on the date of their election. In case of vacancy

among the elective members of the senate or in the house of representatives, special elections may be held in the districts wherein such vacancy occurred under such regulations as may be prescribed by law, but senators or representatives elected in such cases shall hold office only for the unexpired portion of the term wherein the vacancy occurred. Senators and representatives appointed by the Governor General shall hold office until removed by the Governor General. [39 Stat. L. 550.]

Sec. 18. [Senate and House as judges of elections, etc.— power to expel member — organization — sessions — compensation of members — privilege from arrest — eligibility to other offices.] That the senate and house of representatives, respectively, shall be the sole judges of the elections, returns and qualifications of their elective members, and each house may determine the rules of its proceedings, punish its members for disorderly behavior, and, with the concurrence of two-thirds, expel an elective member. Both houses shall convene at the capitol on the sixteenth day of October next following the election and organize by the election of a speaker or a presiding officer, a clerk, and a sergeant at arms for each house, and such other officers and assistants as may be required. A majority of each house shall constitute a quorum to do business, but a smaller number may meet, adjourn from day to day, and compel the attendance of absent members. The legislature shall hold annual sessions, commencing on the sixteenth day of October, or, if the sixteenth day of October be a legal holiday, then on the first day following which is not a legal holiday, in each year. The legislature may be called in special session at any time by the Governor General for general legislation, or for action on such specific subjects as he may designate. No special session shall continue longer than thirty days, and no regular session shall continue longer than one hundred days, exclusive of Sundays. The legislature is hereby given the power and authority to change the date of the commencement of its annual sessions.

The senators and representatives shall receive an annual compensation for their services, to be ascertained by law, and paid out of the treasury of the Philippine Islands. The senators and representatives shall, in all cases except treason, felony, and breach of the peace, be privileged from arrest during their attendance at the session of their respective houses and in going to and returning from the same; and for any speech or debate in either house they shall not be questioned in any other place.

No senator or representative shall, during the time for which he may have been elected, be eligible to any office the election to which is vested in the legislature, nor shall be appointed to any office of trust or profit which shall have been created or the emoluments of which shall have been increased during such term. [39 Stat. L. 550.]

Sec. 19. [Journal of houses of legislature — approval of legislation.] That each house of the legislature shall keep a journal of its proceedings and, from time to time, publish the same; and the yeas and nays of the members of either house, on any question, shall, upon demand of one-fifth of those present, be entered on the journal, and every bill and joint

resolution which shall have passed both houses shall, before it becomes a law, be presented to the Governor General. If he approve the same, he shall sign it; but if not, he shall return it with his objections to that house in which it shall have originated, which shall enter the objections at large on its journal and proceed to reconsider it. If, after such reconsideration, two-thirds of the members elected to that house shall agree to pass the same, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered, and if approved by two-thirds of all the members elected to that house it shall be sent to the Governor General, who, in case he shall then not approve, shall transmit the same to the President of the United States. The vote of each house shall be by the yeas and nays, and the names of the members voting for and against shall be entered on the journal. If the President of the United States approve the same, he shall sign it and it shall become a law. If he shall not approve same, he shall return it to the Governor General, so stating, and it shall not become a law: *Provided*, That if any bill or joint resolution shall not be returned by the Governor General as herein provided within twenty days (Sundays excepted) after it shall have been presented to him the same shall become a law in like manner as if he had signed it, unless the legislature by adjournment prevent its return, in which case it shall become a law unless vetoed by the Governor General within thirty days after adjournment: *Provided further*, That the President of the United States shall approve or disapprove an act submitted to him under the provisions of this section within six months from and after its enactment and submission for his approval; and if not approved within such time, it shall become a law the same as if it had been specifically approved. The Governor General shall have the power to veto any particular item or items of an appropriation bill, but the veto shall not affect the item or items to which he does not object. The item or items objected to shall not take effect except in the manner heretofore provided in this section as to bills and joint resolutions returned to the legislature without his approval.

All laws enacted by the Philippine Legislature shall be reported to the Congress of the United States, which hereby reserves the power and authority to annul the same. If at the termination of any fiscal year the appropriations necessary for the support of government for the ensuing fiscal year shall not have been made, the several sums appropriated in the last appropriation bills for the objects and purposes therein specified, so far as the same may be done, shall be deemed to be reappropriated for the several objects and purposes specified in said last appropriation bill; and until the legislature shall act in such behalf the treasurer shall, when so directed by the Governor General, make the payments necessary for the purposes aforesaid. [39 Stat. L. 551.]

SEC. 20. [Resident commissioners to United States.] That at the first meeting of the Philippine Legislature created by this Act and triennially thereafter there shall be chosen by the legislature two Resident Commissioners to the United States, who shall hold their office for a term of three years beginning with the fourth day of March following their election, and who shall be entitled to an official recognition as such by all departments upon presentation to the President of a certificate of election by the

Governor General of said islands. Each of said Resident Commissioners shall, in addition to the salary and the sum in lieu of mileage now allowed by law, be allowed the same sum for stationery and for the pay of necessary clerk hire as is now allowed to the Members of the House of Representatives of the United States, to be paid out of the Treasury of the United States, and the franking privilege allowed by law to Members of Congress. No person shall be eligible to election as Resident Commissioner who is not a bona fide elector of said islands and who does not owe allegiance to the United States and who is not more than thirty years of age and who does not read and write the English language. The present two Resident Commissioners shall hold office until the fourth of March, nineteen hundred and seventeen. In case of vacancy in the position of Resident Commissioner caused by resignation or otherwise, the Governor General may make temporary appointments until the next meeting of the Philippine Legislature, which shall then fill such vacancy; but the Resident Commissioner thus elected shall hold office only for the unexpired portion of the term wherein the vacancy occurred. [39 Stat. L. 552.]

SEC. 21. [Governor General.] That the supreme executive power shall be vested in an executive officer, whose official title shall be "The Governor General of the Philippine Islands." He shall be appointed by the President, by and with the advice and consent of the Senate, of the United States, and hold his office at the pleasure of the President and until his successor is chosen and qualified. The Governor General shall reside in the Philippine Islands during his official incumbency, and maintain his office at the seat of government. He shall, unless otherwise herein provided, appoint, by and with the consent of the Philippine Senate, such officers as may now be appointed by the Governor General, or such as he is authorized by this Act to appoint, or whom he may hereafter be authorized by law to appoint; but appointments made while the senate is not in session shall be effective either until disapproval or until the next adjournment of the senate. He shall have general supervision and control of all of the departments and bureaus of the government in the Philippine Islands as far as is not inconsistent with the provisions of this Act, and shall be commander in chief of all locally created armed forces and militia. He is hereby vested with the exclusive power to grant pardons and reprieves and remit fines and forfeitures, and may veto any legislation enacted as herein provided. He shall submit within ten days of the opening of each regular session of the Philippine Legislature a budget of receipts and expenditures, which shall be the basis of the annual appropriation bill. He shall commission all officers that he may be authorized to appoint. He shall be responsible for the faithful execution of the laws of the Philippine Islands and of the United States operative within the Philippine Islands, and whenever it becomes necessary he may call upon the commanders of the military and naval forces of the United States in the islands, or summon the posse comitatus, or call out the militia or other locally created armed forces, to prevent or suppress lawless violence, invasion, insurrection, or rebellion; and he may, in case of rebellion or invasion, or imminent danger thereof, when the public safety requires it,

suspend the privileges of the writ of habeas corpus, or place the islands, or any part thereof, under martial law: *Provided*, That whenever the Governor General shall exercise this authority, he shall at once notify the President of the United States thereof, together with the attending facts and circumstances, and the President shall have power to modify or vacate the action of the Governor General. He shall annually and at such other times as he may be required make such official report of the transactions of the government of the Philippine Islands to an executive department of the United States to be designated by the President, and his said annual report shall be transmitted to the Congress of the United States; and he shall perform such additional duties and functions as may in pursuance of law be delegated or assigned to him by the President. [39 Stat. L. 552.]

SEC. 22. [Executive departments — Bureau of non-Christian tribes.] That, except as provided otherwise in this Act, the executive departments of the Philippine Government shall continue as now authorized by law until otherwise provided by the Philippine Legislature. When the Philippine Legislature herein provided shall convene and organize, the Philippine Commission, as such, shall cease and determine, and the members thereof shall vacate their offices as members of said commission: *Provided*, That the heads of executive departments shall continue to exercise their executive functions until the heads of departments provided by the Philippine Legislature pursuant to the provisions of this Act are appointed and qualified. The Philippine Legislature may thereafter by appropriate legislation increase the number or abolish any of the executive departments, or make such changes in the names and duties thereof as it may see fit, and shall provide for the appointment and removal of the heads of the executive departments by the Governor General: *Provided*, That all executive functions of the government must be directly under the Governor General or within one of the executive departments under the supervision and control of the Governor General. There is hereby established a bureau, to be known as the Bureau of Non-Christian tribes, which said bureau shall be embraced in one of the executive departments to be designated by the Governor General, and shall have general supervision over the public affairs of the inhabitants of the territory represented in the legislature by appointive senators and representatives. [39 Stat. L. 553.]

SEC. 23. [Vice governor — department of interior — vacancies in office of governor general or vice governor.] That there shall be appointed by the President, by and with the advice and consent of the Senate of the United States, a vice governor of the Philippine Islands, who shall have all the powers of the Governor General in the case of a vacancy or temporary removal, resignation, or disability of the Governor General, or in case of his temporary absence; and the said vice governor shall be the head of the executive department, known as the department of public instruction, which shall include the bureau of education and the bureau of health, and he may be assigned such other executive duties as the Governor General may designate.

Other bureaus now included in the department of public instruction shall until otherwise provided by the Philippine Legislature, be included in the department of the interior.

The President may designate the head of an executive department of the Philippine government to act as Governor General in the case of a vacancy, the temporary removal, resignation, or disability of the Governor General and the vice governor, or their temporary absence, and the head of the department thus designated shall exercise all the powers and perform all the duties of the Governor General during such vacancy, disability, or absence. [39 Stat. L. 553.]

SEC. 24. [Auditor — deputy auditor — appointment — powers — duties — decisions.] That there shall be appointed by the President an auditor, who shall examine, audit, and settle all accounts pertaining to the revenues and receipts from whatever source of the Philippine government and of the provincial and municipal governments of the Philippines, including trust funds and funds derived from bond issues; and audit, in accordance with laws and administrative regulations, all expenditures of funds or property pertaining to or held in trust by the government or the Provinces or municipalities thereof. He shall perform a like duty with respect to all government branches.

He shall keep the general accounts of the government and preserve the vouchers pertaining thereto.

It shall be the duty of the auditor to bring to the attention of the proper administrative officer expenditures of funds or property which, in his opinion, are irregular, unnecessary, excessive, or extravagant.

There shall be a deputy auditor appointed in the same manner as the auditor. The deputy auditor shall sign such official papers as the auditor may designate and perform such other duties as the auditor may prescribe, and in case of the death, resignation, sickness, or other absence of the auditor from his office, from any cause, the deputy auditor shall have charge of such office. In case of the absence from duty, from any cause, of both the auditor and the deputy auditor, the Governor General may designate an assistant, who shall have charge of the office.

The administrative jurisdiction of the auditor over accounts, whether of funds or property, and all vouchers and records pertaining thereto, shall be exclusive. With the approval of the Governor General he shall from time to time make and promulgate general or special rules and regulations not inconsistent with law covering the method of accounting for public funds and property, and funds and property held in trust by the government or any of its branches: *Provided*, That any officer accountable for public funds or property may require such additional reports or returns from his subordinates or others as he may deem necessary for his own information and protection.

The decisions of the auditor shall be final and conclusive upon the executive branches of the government, except that appeal therefrom may be taken by the party aggrieved or the head of the department concerned within one year, in the manner hereinafter prescribed. The auditor shall, except as hereinafter provided, have like authority as that conferred by law upon the several auditors of the United States and the Comptroller of

the United States Treasury and is authorized to communicate directly with any person having claims before him for settlement, or with any department, officer, or person having official relations with his office.

As soon after the close of each fiscal year as the accounts of said year may be examined and adjusted the auditor shall submit to the Governor General and the Secretary of War an annual report of the fiscal concerns of the government, showing the receipts and disbursements of the various departments and bureaus of the government and of the various Provinces and municipalities, and make such other reports as may be required of him by the Governor General or the Secretary of War.

In the execution of their duties the auditor and the deputy auditor are authorized to summon witnesses, administer oaths, and to take evidence, and, in the pursuance of these provisions, may issue subpoenas and enforce the attendance of witnesses, as now provided by law.

The office of the auditor shall be under the general supervision of the Governor General and shall consist of the auditor and deputy auditor and such necessary assistants as may be prescribed by law. [39 Stat. L. 553.]

Sec. 25. [Appeal from action of auditor.] That any person aggrieved by the action or decision of the auditor in the settlement of his account or claim may, within one year, take an appeal in writing to the Governor General, which appeal shall specifically set forth the particular action of the auditor to which exception is taken, with the reason and authorities relied on for reversing such decision.

If the Governor General shall confirm the action of the auditor, he shall so indorse the appeal and transmit it to the auditor, and the action shall thereupon be final and conclusive. Should the Governor General fail to sustain the action of the auditor, he shall forthwith transmit his grounds of disapproval to the Secretary of War, together with the appeal and the papers necessary to a proper understanding of the matter. The decision of the Secretary of War in such case shall be final and conclusive. [39 Stat. L. 554.]

Sec. 26. [Courts — jurisdiction — judges.] That the supreme court and the courts of first instance of the Philippine Islands shall possess and exercise jurisdiction as heretofore provided and such additional jurisdiction as shall hereafter be prescribed by law. The municipal courts of said islands shall possess and exercise jurisdiction as now provided by law, subject in all matters to such alteration and amendment as may be hereafter enacted by law; and the chief justice and associate justices of the supreme court shall hereafter be appointed by the President, by and with the advice and consent of the Senate of the United States. The judges of the court of first instance shall be appointed by the Governor General, by and with the advice and consent of the Philippine Senate: *Provided*, That the admiralty jurisdiction of the supreme court and courts of first instance shall not be changed except by Act of Congress. That in all cases pending under the operation of existing laws, both criminal and civil, the jurisdiction shall continue until final judgment and determination. [39 Stat. L. 555.]

SEC. 27. [Review by United States Supreme Court of final judgments, etc.] That the Supreme Court of the United States shall have jurisdiction to review, revise, reverse, modify, or affirm the final judgments and decrees of the Supreme Court of the Philippine Islands in all actions, cases, causes, and proceedings now pending therein or hereafter determined thereby in which the Constitution or any statute, treaty, title, right, or privilege of the United States is involved, or in causes in which the value in controversy exceeds \$25,000, or in which the title or possession of real estate exceeding in value the sum of \$25,000, to be ascertained by the oath of either party or of other competent witnesses, is involved or brought in question; and such final judgments or decrees may and can be reviewed, revised, reversed, modified, or affirmed by said Supreme Court of the United States on appeal or writ of error by the party aggrieved within the same time, in the same manner, under the same regulations, and by the same procedure, as far as applicable, as the final judgments and decrees of the district courts of the United States. [39 Stat. L. 555.]

SEC. 28. [Franchises, etc.— eminent domain — involuntary servitude.] That the government of the Philippine Islands may grant franchises and rights, including the authority to exercise the right of eminent domain, for the construction and operation of works of public utility and service, and may authorize said works to be constructed and maintained over and across the public property of the United States, including streets, highways, squares, and reservations, and over similar property of the government of said islands, and may adopt rules and regulations under which the provincial and municipal governments of the islands may grant the right to use and occupy such public property belonging to said Provinces or municipalities: *Provided*, That no private property shall be damaged or taken for any purpose under this section without just compensation, and that such authority to take and occupy land shall not authorize the taking, use, or occupation of any land except such as is required for the actual necessary purposes for which the franchise is granted, and that no franchise or right shall be granted to any individual, firm, or corporation except under the conditions that it shall be subject to amendment, alteration, or repeal by the Congress of the United States, and that lands or right of use and occupation of lands thus granted shall revert to the governments by which they were respectively granted upon the termination of the franchises and rights under which they were granted or upon their revocation or repeal. That all franchises or rights granted under this Act shall forbid the issue of stock or bonds except in exchange for actual cash or for property at a fair valuation equal to the par value of the stock or bonds so issued; shall forbid the declaring of stock or bond dividends, and, in the case of public-service corporations, shall provide for the effective regulation of the charges thereof, for the official inspection and regulation of the books and accounts of such corporations, and for the payment of a reasonable percentage of gross earnings into the treasury of the Philippine Islands or of the Province or municipality within which such franchises are granted and exercised: *Provided further*, That it shall be unlawful for any corporation organized under this Act, or for any person, company, or corporation receiving any grant, franchise, or concession from the govern-

ment of said islands, to use, employ, or contract for the labor of persons held in involuntary servitude; and any person, company or corporation so violating the provisions of this Act shall forfeit all charters, grants, or franchises for doing business in said islands, in an action or proceeding brought for that purpose in any court of competent jurisdiction by any officer of the Philippine government, or on the complaint of any citizen of the Philippines, under such regulations and rules as the Philippine Legislature shall prescribe, and in addition shall be deemed guilty of an offense, and shall be punished by a fine of not more than \$10,000. [39 Stat. L. 555.]

SEC. 29. [Salaries of officials — amount — payment.] That, except as in this Act otherwise provided, the salaries of all the officials of the Philippines not appointed by the President, including deputies, assistants, and other employees, shall be such and be so paid out of the revenues of the Philippines as shall from time to time be determined by the Philippine Legislature; and if the legislature shall fail to make an appropriation for such salaries, the salaries so fixed shall be paid without the necessity of further appropriations therefor. The salaries of all officers and all expenses of the offices of the various officials of the Philippines appointed as herein provided by the President shall also be paid out of the revenues of the Philippines. The annual salaries of the following-named officials appointed by the President and so to be paid shall be: The Governor General, \$18,000; in addition thereto he shall be entitled to the occupancy of the buildings heretofore used by the chief executive of the Philippines, with the furniture and effects therein, free of rental; vice governor, \$10,000; chief justice of the supreme court, \$8,000; associate justices of the supreme court, \$7,500 each; auditor, \$6,000; deputy auditor, \$3,000. [39 Stat. L. 556.]

SEC. 30. [Payment of salaries of certain officials, etc.] That the provisions of the foregoing section shall not apply to provincial and municipal officials; their salaries and the compensation of their deputies, assistants, and other help, as well as all other expenses incurred by the Provinces and municipalities, shall be paid out of the provincial and municipal revenues in such manner as the Philippine Legislature shall provide. [39 Stat. L. 556.]

SEC. 31. [Continuance of non-conflicting laws.] That all laws or parts of laws applicable to the Philippines not in conflict with any of the provisions of this Act are hereby continued in force and effect. [39 Stat. L. 556.]

[Taxes imposed by Philippine Legislature — ratification.] * * * The taxes imposed by the Philippine Legislature in section fourteen hundred and fifty-nine of the act numbered twenty-seven hundred and eleven, enacted by that body on March tenth, nineteen hundred and seventeen, are hereby legalized and ratified, and the collection of all such taxes heretofore or hereafter is legalized, ratified, and confirmed hereby as fully to all intents and purposes as if the same by prior Act of Congress specifically had been authorized and directed. [— Stat. L. —.]

This is from the Urgent Deficiencies Appropriation Act of June 4, 1918, ch. —.
See also the Act of July 1, 1916, ch. 209, § 1, *supra*, p. 591.

PORTO RICO

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An Act To provide a civil government for Porto Rico, and for other purposes.

[*Act of March 2, 1917, ch. 145, 39 Stat. L. 951.*]

[**SEC. 1. [Establishment of civil government — territory affected.]**

That the provisions of this Act shall apply to the Island of Porto Rico and to the adjacent islands belonging to the United States, and waters of those islands; and the name Porto Rico as used in this Act shall be held to include not only the island of that name but all the adjacent islands as aforesaid. [*39 Stat. L. 951.*]

BILL OF RIGHTS.

SEC. 2. [Enumeration.] That no law shall be enacted in Porto Rico which shall deprive any person of life, liberty, or property without due process of law, or deny to any person therein the equal protection of the laws.

That in all criminal prosecutions the accused shall enjoy the right to have the assistance of counsel for his defense, to be informed of the nature and cause of the accusation, to have a copy thereof, to have a speedy and public trial, to be confronted with the witnesses against him, and to have compulsory process for obtaining witnesses in his favor.

That no person shall be held to answer for a criminal offense without due process of law; and no person for the same offense shall be twice put in jeopardy of punishment, nor shall be compelled in any criminal case to be a witness against himself.

That all persons shall before conviction be bailable by sufficient sureties, except for capital offenses when the proof is evident or the presumption great.

That no law impairing the obligation of contracts shall be enacted.

That no person shall be imprisoned for debt.

That the privilege of the writ of habeas corpus shall not be suspended, unless when in case of rebellion, insurrection, or invasion the public safety may require it, in either of which events the same may be suspended by the President, or by the governor, whenever during such period the necessity for such suspension shall exist.

That no ex post facto law or bill of attainder shall be enacted.

Private property shall not be taken or damaged for public use except upon payment of just compensation ascertained in the manner provided by law.

Nothing contained in this Act shall be construed to limit the power of the legislature to enact laws for the protection of the lives, health, or safety of employees.

That no law granting a title of nobility shall be enacted, and no person holding any office of profit or trust under the government of Porto Rico shall, without the consent of the Congress of the United States, accept any present, emolument, office, or title of any kind whatever from any king, queen, prince, or foreign State, or any officer thereof.

That excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

That the right to be secure against unreasonable searches and seizures shall not be violated.

That no warrant for arrest or search shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized.

That slavery shall not exist in Porto Rico.

That involuntary servitude, except as a punishment for crime, whereof the party shall have been duly convicted, shall not exist in Porto Rico.

That no law shall be passed abridging the freedom of speech or of the press, or the right of the people peaceably to assemble and petition the Government for redress of grievances.

That no law shall be made respecting an establishment of religion or prohibiting the free exercise thereof, and that the free exercise and enjoyment of religious profession and worship without discrimination or preference shall forever be allowed, and that no political or religious test other than an oath to support the Constitution of the United States and the laws of Porto Rico shall be required as a qualification to any office or public trust under the government of Porto Rico.

That no public money or property shall ever be appropriated, applied, donated, used, directly or indirectly, for the use, benefit, or support of any sect, church, denomination, sectarian institution or association, or system of religion, or for the use, benefit, or support of any priest, preacher, minister, or other religious teacher or dignitary as such, or for charitable, industrial, educational, or benevolent purposes to any person, corporation, or community not under the absolute control of Porto Rico. Contracting of polygamous or plural marriages hereafter is prohibited.

That one year after the approval of this Act and thereafter it shall be unlawful to import, manufacture, sell, or give away, or to expose for sale or gift any intoxicating drink or drug: *Provided*, That the legislature may authorize and regulate importation, manufacture, and sale of said liquors and drugs for medicinal, sacramental, industrial, and scientific uses only. The penalty for violations of this provision with reference to intoxicants shall be a fine of not less than \$25 for the first offense, and for second and subsequent offenses a fine of not less than \$50 and imprisonment for not less than one month or more than one year: *And provided further*, That at any general election within five years after the approval of this Act this provision may, upon petition of not less than ten per centum of the qualified electors of Porto Rico, be submitted to a vote of the qualified electors of Porto Rico, and if a majority of all the qualified electors of Porto Rico voting upon such question shall vote to repeal this provision it shall thereafter not be in force and effect; otherwise it shall be in full force and effect.

That no money shall be paid out of the treasury except in pursuance of an appropriation by law, and on warrant drawn by the proper officer in pursuance thereof.

That the rule of taxation in Porto Rico shall be uniform.

That all money derived from any tax levied or assessed for a special purpose shall be treated as a special fund in the Treasury and paid out for such purpose only except upon the approval of the President of the United States.

That eight hours shall constitute a day's work in all cases of employment of laborers and mechanics by and on behalf of the government of the island on public works, except in cases of emergency.

That the employment of children under the age of fourteen years in any occupation injurious to health or morals or hazardous to life or limb is hereby prohibited. [39 Stat. L. 951.]

SEC. 3. [Export duties — taxes and assessments — internal revenue — public indebtedness — bonds — exemption from taxation.] That no export duties shall be levied or collected on exports from Porto Rico, but taxes and assessments on property, internal revenue, and license fees, and royalties for franchises, privileges, and concessions may be imposed for the purposes of the insular and municipal governments, respectively, as may be provided and defined by the Legislature of Porto Rico; and when necessary to anticipate taxes and revenues, bonds and other obligations may be issued by Porto Rico or any municipal government therein as may be provided by law, and to protect the public credit: *Provided, however*, That no public indebtedness of Porto Rico or of any subdivision or municipality thereof shall be authorized or allowed in excess of seven per centum of the aggregate tax valuation of its property, and all bonds issued by the government of Porto Rico, or by its authority, shall be exempt from taxation by the Government of the United States, or by the government of Porto Rico or of any political or municipal subdivision thereof, or by any State, or by any county, municipality, or other municipal subdivision of any State or Territory of the United States, or by the District of Columbia. In computing the indebtedness of the people of Porto Rico, bonds issued by the people of Porto Rico secured by an equivalent amount of bonds of municipal

corporations or school boards of Porto Rico shall not be counted. [39 Stat. L. 953.]

SEC. 4. [Capital.] That the capital of Porto Rico shall be at the city of San Juan, and the seat of government shall be maintained there. [39 Stat. L. 953.]

SEC. 5. [Citizenship.] That all citizens of Porto Rico, as defined by section seven of the Act of April twelfth, nineteen hundred, "temporarily to provide revenues and a civil government for Porto Rico, and for other other purposes," and all natives of Porto Rico who were temporarily absent from that island on April eleventh, eighteen hundred and ninety-nine, and have since returned and are permanently residing in that island, and are not citizens of any foreign country, are hereby declared, and shall be deemed and held to be, citizens of the United States: *Provided*, That any person hereinbefore described may retain his present political status by making a declaration, under oath, of his decision to do so within six months of the taking effect of this Act before the district court in the district in which he resides, the declaration to be in form as follows:

"I, _____, being duly sworn, hereby declare my intention not to become a citizen of the United States as provided in the Act of Congress conferring United States citizenship upon citizens of Porto Rico and certain natives permanently residing in said island."

In the case of any such person who may be absent from the island during said six months the term of this proviso may be availed of by transmitting a declaration, under oath, in the form herein provided within six months of the taking effect of this Act to the executive secretary of Porto Rico: *And provided further*, That any person who is born in Porto Rico of an alien parent and is permanently residing in that island may, if of full age, within six months of the taking effect of this Act, or if a minor, upon reaching his majority or within one year thereafter, make a sworn declaration of allegiance to the United States before the United States District Court for Porto Rico, setting forth therein all the facts connected with his or her birth and residence in Porto Rico and accompanying due proof thereof, and from and after the making of such declaration shall be considered to be a citizen of the United States. [39 Stat. L. 953.]

For the Act of April 12, 1900, ch. 191, § 7, mentioned in the text, see 5 Fed. Stat. Ann. 765; 7 Fed. Stat. Ann. (2d ed.) 1263.

SEC. 6. [Expenses for government, etc.—payment.] That all expenses that may be incurred on account of the government of Porto Rico for salaries of officials and the conduct of their offices and departments, and all expenses and obligations contracted for the internal improvement or development of the island, not, however, including defenses, barracks, harbors, lighthouses, buoys, and other works undertaken by the United States, shall, except as otherwise specifically provided by the Congress, be paid by the treasurer of Porto Rico out of the revenue in his custody. [39 Stat. L. 954.]

SEC. 7. [Property of United States and Porto Rico — control and disposition.] That all property which may have been acquired in Porto Rico by the United States under the cession of Spain in the treaty of peace entered into on the tenth day of December, eighteen hundred and ninety-eight, in any public bridges, road houses, water powers, highways, navigable streams and the beds thereof, subterranean waters, mines or minerals under the surface of private lands, all property which at the time of the cession belonged, under the laws of Spain then in force, to the various harbor works boards of Porto Rico, all the harbor shores, docks, slips, reclaimed lands, and all public lands and buildings not heretofore reserved by the United States for public purposes, is hereby placed under the control of the government of Porto Rico, to be administered for the benefit of the people of Porto Rico; and the Legislature of Porto Rico shall have authority, subject to the limitations imposed upon all its acts, to legislate with respect to all such matters as it may deem advisable: *Provided*, That the President may from time to time, in his discretion, convey to the people of Porto Rico such lands, buildings, or interests in lands or other property now owned by the United States and within the territorial limits of Porto Rico as in his opinion are no longer needed for purposes of the United States. And he may from time to time accept by legislative grant from Porto Rico any lands, buildings, or other interests or property which may be needed for public purposes by the United States. [39 Stat. L. 954.]

SEC. 8. [Waters and islands — control and administration — former Act repealed.] That the harbor areas and navigable streams and bodies of water and submerged lands underlying the same in and around the island of Porto Rico and the adjacent islands and waters, now owned by the United States and not reserved by the United States for public purposes, be, and the same are hereby, placed under the control of the government of Porto Rico, to be administered in the same manner and subject to the same limitations as the property enumerated in the preceding section: *Provided*, That all laws of the United States for the protection and improvement of the navigable waters of the United States and the preservation of the interests of navigation and commerce, except so far as the same may be locally inapplicable, shall apply to said island and waters and to its adjacent islands and waters: *Provided further*, That nothing in this Act contained shall be construed so as to affect or impair in any manner the terms or conditions of any authorizations, permits, or other powers heretofore lawfully granted or exercised in or in respect of said waters and submerged lands in and surrounding said islands and its adjacent island by the Secretary of War or other authorized officer or agent of the United States: *And provided further*, That the Act of Congress approved June eleventh, nineteen hundred and six, entitled "An Act to empower the Secretary of War, under certain restrictions, to authorize the construction, extension, and maintenance of wharves, piers, and other structures on lands underlying harbor areas in navigable streams and bodies of water in or surrounding Porto Rico and the islands adjacent thereto," and all other laws and parts of laws in conflict with this section be, and the same are hereby, repealed. [39 Stat. L. 954.]

For the Act of June 11, 1906, ch. 3075, repealed by this section, see 1909 Supp. Fed. Stat. Ann. 516: 7 Fed. Stat. Ann. (2d ed.) 1282.

SEC. 9. [Statutory laws of United States — applicability to Porto Rico — taxes under internal revenue laws — disposition.] That the statutory laws of the United States not locally inapplicable, except as hereinbefore or hereinafter otherwise provided, shall have the same force and effect in Porto Rico as in the United States, except the internal-revenue laws: *Provided, however,* That hereafter all taxes collected under the internal-revenue laws of the United States on articles produced in Porto Rico and transported to the United States, or consumed in the island shall be covered into the treasury of Porto Rico. [39 Stat. L. 954.]

SEC. 10. [Judicial process — criminal prosecutions by whom conducted — officials — qualifications.] That all judicial process shall run in the name of "United States of America, ss, the President of the United States," and all penal or criminal prosecutions in the local courts shall be conducted in the name and by the authority of "The People of Porto Rico"; and all officials shall be citizens of the United States, and, before entering upon the duties of their respective offices, shall take an oath to support the Constitution of the United States and the laws of Porto Rico. [39 Stat. L. 954.]

SEC. 11. [Reports to United States — designation of department in United States to handle Porto Rican matters.] That all reports required by law to be made by the governor or heads of departments to any official of the United States shall hereafter be made to an executive department of the Government of the United States to be designated by the President, and the President is hereby authorized to place all matters pertaining to the government of Porto Rico in the jurisdiction of such department. [39 Stat. L. 955.]

EXECUTIVE DEPARTMENT.

SEC. 12. [Governor — appointment, etc.— duties.] That the supreme executive power shall be vested in an executive officer, whose official title shall be "The Governor of Porto Rico." He shall be appointed by the President, by and with the advice and consent of the Senate, and hold his office at the pleasure of the President and until his successor is chosen and qualified. The governor shall reside in Porto Rico during his official incumbency and maintain his office at the seat of government. He shall have general supervision and control of all the departments and bureaus of the government in Porto Rico, so far as is not inconsistent with the provisions of this Act, and shall be commander in chief of the militia. He may grant pardons and reprieves and remit fines and forfeitures for offenses against the laws of Porto Rico, and respites for all offenses against the laws of the United States until the decision of the President can be ascertained, and may veto any legislation enacted as hereinafter provided. He shall commission all officers that he may be authorized to appoint. He shall be responsible for the faithful execution of the laws of Porto Rico and of the United States applicable to Porto Rico, and whenever it becomes necessary he may call upon the commanders of the military and naval forces of the United States in the island, or summon the posse comitatus, or call

out the militia to prevent or suppress lawless violence, invasion, insurrection, or rebellion, and he may, in case of rebellion or invasion, or imminent danger thereof, when the public safety requires it, suspend the privilege of the writ of habeas corpus, or place the island, or any part thereof, under martial law until communication can be had with the President and the President's decision therein made known. He shall annually, and at such other times as he may be required, make official report of the transactions of the government of Porto Rico to the executive department of the Government of the United States to be designated by the President as herein provided, and his said annual report shall be transmitted to Congress, and he shall perform such additional duties and functions as may in pursuance of law be delegated to him by the President. [39 Stat. L. 955.]

SEC. 13. [Executive departments — creation — enumeration — council — duties.] That the following executive departments are hereby created: A department of justice, the head of which shall be designated as the attorney general; a department of finance, the head of which shall be designated as the treasurer; a department of interior, the head of which shall be designated as the commissioner of the interior; a department of education, the head of which shall be designated as the commissioner of education; a department of agriculture and labor, the head of which shall be designated as the commissioner of agriculture and labor; and a department of health, the head of which shall be designated as the commissioner of health. The attorney general and the commissioner of education shall be appointed by the President, by and with the advice and consent of the Senate of the United States, to hold office for four years and until their successors are appointed and qualified, unless sooner removed by the President. The heads of the four remaining departments shall be appointed by the governor, by and with the advice and consent of the Senate of Porto Rico. The heads of departments appointed by the governor shall hold office for the term of four years and until their successors are appointed and qualified, unless sooner removed by the governor.

Heads of departments shall reside in Porto Rico during their official incumbency, and those appointed by the governor shall have resided in Porto Rico for at least one year prior to their appointment.

The heads of departments shall collectively form a council to the governor, known as the executive council. They shall perform under the general supervision of the governor the duties hereinafter prescribed, or which may hereafter be prescribed by law and such other duties, not inconsistent with law, as the governor, with the approval of the President, may assign to them; and they shall make annual and such other reports to the governor as he may require, which shall be transmitted to the executive department of the Government of the United States to be designated by the President as herein provided: *Provided*, That the duties herein imposed upon the heads of departments shall not carry with them any additional compensation. [39 Stat. L. 955.]

SEC. 14. [Attorney general — duties.] That the attorney general shall have charge of the administration of justice in Porto Rico; he shall be the legal adviser of the governor and the heads of departments and shall be

responsible for the proper representation of the people of Porto Rico or its duly constituted officers in all actions and proceedings, civil or criminal, in the Supreme Court of Porto Rico in which the people of Porto Rico shall be interested or a party, and he may, if directed by the governor or if in his judgment the public interest requires it, represent the people of Porto Rico or its duly constituted officers in any other court or before any other officer or board in any action or proceeding, civil or criminal, in which the people of Porto Rico may be a party or be interested. He shall also perform such other duties not inconsistent herewith as may be prescribed by law. [39 Stat. L. 956.]

SEC. 15. [Treasurer — qualification — duties — depositaries of government.] That the treasurer shall give bond, approved as to form by the attorney general of Porto Rico, in such sum as the legislature may require, not less, however, than the sum of \$125,000, with surety or sureties approved by the governor, and he shall collect and be the custodian of public funds, and shall disburse the same in accordance with law, on warrants signed by the auditor and countersigned by the governor, and perform such other duties as may be provided by law. He may designate banking institutions in Porto Rico and the United States as depositaries of the government of Porto Rico, subject to such conditions as may be prescribed by the governor, after they have filed with him satisfactory evidence of their sound financial condition and have deposited bonds of the United States or of the government of Porto Rico or other security satisfactory to the governor in such amounts as may be indicated by him; and no banking institution shall be designated a depositary of the government of Porto Rico until the foregoing conditions have been complied with. Interest on deposits shall be required and paid into the treasury. [39 Stat. L. 956.]

SEC. 16. [Commissioner of interior — duties.] That the commissioner of the interior shall superintend all works of a public nature, have charge of all public buildings, grounds, and lands, except those belonging to the United States, and shall execute such requirements as may be imposed by law with respect thereto, and perform such other duties as may be prescribed by law. [39 Stat. L. 956.]

SEC. 17. [Commissioner of education — duties.] That the commissioner of education shall superintend public instruction throughout Porto Rico; all proposed disbursements on account thereof must be approved by him, and all courses of study shall be prepared by him, subject to disapproval by the governor if he desires to act. He shall prepare rules governing the selection of teachers, and appointments of teachers by local school boards shall be subject to his approval, and he shall perform such other duties, not inconsistent with this Act, as may be prescribed by law. [39 Stat. L. 956.]

SEC. 18. [Commissioner of agriculture and labor — duties.] That the commissioner of agriculture and labor shall have general charge of such bureaus and branches of government as have been or shall be legally constituted for the study, advancement, and benefit of agricultural and other

industries, the chief purpose of this department being to foster, promote, and develop the agricultural interests and the welfare of the wage earners of Porto Rico, to improve their working conditions, and to advance their opportunities for profitable employment, and shall perform such other duties as may be prescribed by law. [39 Stat. L. 957.]

SEC. 19. [Commissioner of health — duties.] That the commissioner of health shall have general charge of all matters relating to public health, sanitation, and charities, except such as relate to the conduct of maritime quarantine, and shall perform such other duties as may be prescribed by law. [39 Stat. L. 957.]

SEC. 20. [Auditor — appointment — salary — duties — decisions.] That there shall be appointed by the President an auditor, at an annual salary of \$5,000, for a term of four years and until his successor is appointed and qualified, who shall examine, audit, and settle all accounts pertaining to the revenues and receipts, from whatever source, of the government of Porto Rico and of the municipal governments of Porto Rico, including public trust funds and funds derived from bond issues; and audit, in accordance with law and administrative regulations, all expenditures of funds or property pertaining to or held in trust by the government of Porto Rico or the municipalities or dependencies thereof. He shall perform a like duty with respect to all government branches.

He shall keep the general accounts of the government and preserve the vouchers pertaining thereto.

It shall be the duty of the auditor to bring to the attention of the proper administrative officer expenditures of funds or property which, in his opinion, are irregular, unnecessary, excessive, or extravagant.

In case of vacancy or of the absence from duty, from any cause, of the auditor, the Governor of Porto Rico may designate an assistant, who shall have charge of the office.

The jurisdiction of the auditor over accounts, whether of funds or property, and all vouchers and records pertaining thereto, shall be exclusive. With the approval of the governor, he shall from time to time make and promulgate general or special rules and regulations not inconsistent with law covering the methods of accounting for public funds and property, and funds and property held in trust by the government or any of its branches: *Provided*, That any officer accountable for public funds or property may require such additional reports or returns from his subordinates or others as he may deem necessary for his own information and protection.

The decisions of the auditor shall be final, except that appeal therefrom may be taken by the party aggrieved or the head of the department concerned within one year, in the manner hereinafter prescribed. The auditor shall, except as hereinafter provided, have like authority as that conferred by the law upon the several auditors of the United States and the Comptroller of the United States Treasury, and is authorized to communicate directly with any person having claims before him for settlement, or with any department, officer, or person having official relations with his office.

As soon after the close of each fiscal year as the accounts of said year may be examined and adjusted, the auditors shall submit to the governor

an annual report of the fiscal concerns of the government, showing the receipts and disbursements of the various departments and bureaus of the government and of the various municipalities, and make such other reports as may be required of him by the governor or the head of the executive department of the Government of the United States, to be designated by the President as herein provided.

In the execution of his duties the auditor is authorized to summon witnesses, administer oaths, and to take evidence, and, in the pursuance of these provisions, may issue subpoenas and enforce the attendance of witnesses.

The office of the auditor shall be under the general supervision of the governor and shall consist of the auditor and such necessary assistants as may be prescribed by law. [39 Stat. L. 957.]

SEC. 21. [Appeal from decision of auditor.] That any person aggrieved by the action or decision of the auditor in the settlement of his account or claim may, within one year, take an appeal in writing to the governor, which appeal shall specifically set forth the particular action of the auditor to which exception is taken, with the reason and authorities relied on for reversing such decision. The decision of the governor in such case shall be final, subject to such right of action as may be otherwise provided by law. [39 Stat. L. 958.]

SEC. 22. [Executive secretary — appointment, salary, etc.— duties — vacancy.] That there shall be appointed by the governor, by and with the advice and consent of the Senate of Porto Rico, an executive secretary at an annual salary of \$4,000, who shall record and preserve the minutes and proceedings of the public service commission hereinafter provided for and the laws enacted by the legislature and all acts and proceedings of the governor, and promulgate all proclamations and orders of the governor and all laws enacted by the legislature, and until otherwise provided by the legislature of Porto Rico perform all the duties of secretary of Porto Rico as now provided by law, except as otherwise specified in this Act, and perform such other duties as may be assigned to him by the Governor of Porto Rico. In the event of a vacancy in the office, or the absence, illness, or temporary disqualification of such officer, the governor shall designate some officer or employee of the government to discharge the functions of said office during such vacancy, absence, illness, or temporary disqualification. [39 Stat. L. 958.]

SEC. 23. [Copies of laws enacted by legislature — transmission to United States government.] That the Governor of Porto Rico, within sixty days after the end of each session of the legislature, shall transmit to the executive department of the Government of the United States, to be designated as herein provided for, which shall in turn, transmit the same to the Congress of the United States, copies of all laws enacted during the session. [39 Stat. L. 958.]

SEC. 24. [Vacancy in office of governor — how filled.] That the President may from time to time designate the head of an executive department

of Porto Rico to act as governor in the case of a vacancy, the temporary removal, resignation, or disability of the governor, or his temporary absence, and the head of the department thus designated shall exercise all the powers and perform all the duties of the governor during such vacancy, disability, or absence. [39 Stat. L. 958.]

LEGISLATIVE DEPARTMENT.

SEC. 25. [Legislative powers — where vested.] That all local legislative powers in Porto Rico, except as herein otherwise provided, shall be vested in a legislature which shall consist of two houses, one the senate and the other the house of representatives, and the two houses shall be designated "the Legislature of Porto Rico." [39 Stat. L. 958.]

SEC. 26. [Senate — number and term of members — qualifications — powers.] That the Senate of Porto Rico shall consist of nineteen members elected for terms of four years by the qualified electors of Porto Rico. Each of the seven senatorial districts defined as hereinafter provided shall have the right to elect two senators, and in addition thereto there shall be elected five senators at large. No person shall be a member of the Senate of Porto Rico who is not over thirty years of age, and who is not able to read and write either the Spanish or English language, and who has not been a resident of Porto Rico for at least two consecutive years, and, except in the case of senators at large, an actual resident of the senatorial district from which chosen for a period of at least one year prior to his election. Except as herein otherwise provided, the Senate of Porto Rico shall exercise all of the purely legislative powers and functions heretofore exercised by the Executive Council, including confirmation of appointments; but appointments made while the senate is not in session shall be effective either until disapproved or until the next adjournment of the senate for the session. In electing the five senators at large each elector shall be permitted to vote for but one candidate, and the five candidates receiving the largest number of votes shall be declared elected. [39 Stat. L. 958.]

SEC. 27. [House of Representatives — number and terms of members — qualifications.] That the House of Representatives of Porto Rico shall consist of thirty-nine members elected quadrennially by the qualified electors of Porto Rico, as hereinafter provided. Each of the representative districts hereinafter provided for shall have the right to elect one representative, and in addition thereto there shall be elected four representatives at large. No person shall be a member of the house of representatives who is not over twenty-five years of age, and who is not able to read and write either the Spanish or English language, except in the case of representative at large, who has not been a bona fide resident of the district from which elected for at least one year prior to his election. In electing the four representatives at large, each elector shall be permitted to vote for but one candidate and the four candidates receiving the largest number of votes shall be elected. [39 Stat. L. 959.]

SEC. 28. [Election districts.] That for the purpose of elections hereafter to the legislature the island of Porto Rico shall be divided into thirty-five representative districts, composed of contiguous and compact territory and established, so far as practicable, upon the basis of equal population. The division into and the demarcation of such districts shall be made by the Executive Council of Porto Rico. Division of districts shall be made as nearly as practicable to conform to the topographical nature of the land, with regard to roads and others means of communication and to natural barriers. Said Executive Council shall also divide the island of Porto Rico into seven senatorial districts, each composed of five contiguous and compact representative districts. They shall make their report within thirty days after the approval of this Act, which report, when approved by the governor, shall be final. [39 Stat. 959.]

SEC. 29. [Elections — time of holding — officers chosen.] That the next election in Porto Rico shall be held in the year nineteen hundred and seventeen upon the sixteenth day of July. At such election there shall be chosen senators, representatives, a Resident Commissioner to the United States, and two public-service commissioners, as herein provided. Thereafter the elections shall be held on the first Tuesday after the first Monday in November, beginning with the year nineteen hundred and twenty, and every four years thereafter, and the terms of office of all municipal officials who have heretofore been elected and whose terms would otherwise expire at the beginning of the year nineteen hundred and nineteen are hereby extended until the officials who may be elected to fill such offices in nineteen hundred and twenty shall have been duly qualified. *Provided, however,* That nothing herein contained shall be construed to limit the right of the Legislature of Porto Rico at any time to revise the boundaries of senatorial and representative districts and of any municipality, or to abolish any municipality and the officers provided therefor. [39 Stat. L. 959.]

SEC. 30. [Senators and representatives — term of office — vacancies — appointment to other office.] That the term of office of senators and representatives chosen by the first general election shall be until January first, nineteen hundred and twenty-one, and the terms of office of senators and representatives chosen at subsequent elections shall be four years from the second of January following their election. In case of vacancy among the members of the senate or in the house of representatives, special elections may be held in the districts wherein such vacancy occurred, under such regulations as may be prescribed by law, but senators or representatives elected in such cases shall hold office only for the unexpired portion of the term wherein the vacancy occurred, and no senator or representative shall, during the time for which he shall have been elected, be appointed to any civil office under the government of Porto Rico, nor be appointed to any office created by Act of the legislature during the time for which he shall have been elected until two years after his term of office shall have expired. [39 Stat. L. 959.]

SEC. 31. [Compensation of members.] That members of the Senate and House of Representatives of Porto Rico shall receive compensation at the

rate of \$7 per day for the first ninety days of each regular session and \$1 per day for each additional day of such session while in session, and mileage for each session at the rate of 10 cents per kilometer for each kilometer actually and necessarily traveled in going from their legislative districts to the capital and therefrom to their place of residence in their districts by the usual routes of travel. [39 Stat. L. 960.]

SEC. 32. [Senate and house as sole judges, etc., of qualifications of members, etc.—time and place of convening—organization.] That the senate and house of representatives, respectively, shall be the sole judges of the elections, returns, and qualifications of their members, and they shall have and exercise all the powers with respect to the conduct of their proceedings that usually pertain to parliamentary legislative bodies. Both houses shall convene at the capital on the second Monday in February following the next election, and organize by the election of a speaker or a presiding officer, a clerk, and a sergeant at arms for each house, and such other officers and assistants as may be required. [39 Stat. L. 960.]

SEC. 33. [Regular and special sessions.] That the first regular session of the Legislature of Porto Rico, provided for by this Act, shall convene on the twenty-eighth day after the first election provided for herein, and regular sessions of the legislature shall be held biennially thereafter, convening on the second Monday in February of the year nineteen hundred and nineteen, and on the second Monday in February of each second year thereafter. The governor may call special sessions of the legislature or of the senate at any time when in his opinion the public interest may require it, but no special session shall continue longer than ten days, not including Sundays and holidays, and no legislation shall be considered at such session other than that specified in the call, and he shall call the senate in special session at least once each year on the second Monday in February of those years in which a regular session of the legislature is not provided for. [39 Stat. L. 960.]

SEC. 34. [Powers and duties of legislature—procedure—bribery of members—appropriations—payment.] That the enacting clause of the laws shall be as to acts, "Be it enacted by the Legislature of Porto Rico," and as to joint resolutions, "Be it resolved by the Legislature of Porto Rico." Except as hereinafter provided, bills and joint resolutions may originate in either house. The governor shall submit at the opening of each regular session of the legislature a budget of receipts and expenditures, which shall be the basis of the ensuing biennial appropriation bill. No bill shall become a law until it be passed in each house by a majority yea-and-nay vote of all of the members belonging to such house and entered upon the journal and be approved by the governor within ten days thereafter. If when a bill that has been passed is presented to the governor for his signature he approves the same, he shall sign it; or if not, he shall return it, with his objections, to the house in which it originated, which house shall enter his objections at large on its journal and proceed to reconsider it. If, after such reconsideration, two-thirds of all the members of that house shall agree to pass the same it shall be sent, together with the

objections, to the other house, by which it shall likewise be reconsidered, and if approved by two-thirds of all the members of that house, it shall be sent to the governor, who, in case he shall then not approve, shall transmit the same to the President of the United States. The vote of each house shall be by yeas and nays, and the names of the members voting for and against shall be entered on the journal. If the President of the United States approve the same he shall sign it and it shall become a law. If he shall not approve same he shall return it to the governor so stating, and it shall not become a law: *Provided*, That the President of the United States shall approve or disapprove an Act submitted to him under the provisions of this section within ninety days from and after its submission for his approval; and if not approved within such time it shall become a law the same as if it had been specifically approved. If any bill presented to the governor contains several items of appropriation of money, he may object to one or more of such items, or any part or parts, portion or portions thereof, while approving of the other portion of the bill. In such case he shall append to the bill, at the time of signing it, a statement of the items, parts or portions thereof to which he objects, and the appropriation so objected to shall not take effect. If any bill shall not be returned by the governor within ten days (Sundays excepted) after it shall have been presented to him, it shall be a law in like manner as if he had signed it, unless the legislature by adjournment prevents its return, in which case it shall be a law if signed by the governor within thirty days after receipt by him; otherwise it shall not be a law. All laws enacted by the Legislature of Porto Rico shall be reported to the Congress of the United States, as provided in section twenty-three of this Act, which hereby reserves the power and authority to annul the same. If at the termination of any fiscal year the appropriations necessary for the support of the government for the ensuing fiscal year shall not have been made, the several sums appropriated in the last appropriation bills for the objects and purposes therein specified, so far as the same may be applicable, shall be deemed to be reappropriated item by item; and until the legislature shall act in such behalf the treasurer may, with the advice of the governor, make the payments necessary for the purposes aforesaid.

Each house shall keep a journal of its proceedings, and may, in its discretion, from time to time publish the same, and the yeas and nays on any question shall, on the demand of one-fifth of the members present, be entered on the journal.

The sessions of each house and of the committees of the whole shall be open.

Neither house shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two houses shall be sitting.

No laws shall be passed except by bill, and no bill shall be so altered or amended on its passage through either house as to change its original purpose.

No act of the legislature except the general appropriation bills for the expenses of the government shall take effect until ninety days after its passage, unless in case of emergency (which shall be expressed in the preamble or body of the act) the legislature shall by a vote of two-

thirds of all the members elected to each house otherwise direct. No bill, except the general appropriation bill for the expenses of the government only, introduced in either house of the legislature after the first forty days of the session, shall become a law.

No bill shall be considered or become a law unless referred to a committee, returned therefrom, and printed for the use of the members: *Provided*, That either house may by a majority vote discharge a committee from the consideration of a measure and bring it before the body for consideration.

No bill, except general appropriation bills, shall be passed containing more than one subject, which shall be clearly expressed in its title; but if any subject shall be embraced in any act which shall not be expressed in the title, such act shall be void only as to so much thereof as shall not be so expressed.

No law shall be revived, or amended, or the provisions thereof extended or conferred by reference to its title only, but so much thereof as is revived, amended, extended, or conferred shall be reenacted and published at length.

The presiding officer of each house shall, in the presence of the house over which he presides, sign all bills and joint resolutions passed by the legislature, after their titles shall have been publicly read, immediately before signing; and the fact of signing shall be entered on the journal.

The legislature shall prescribe by law the number, duties, and compensation of the officers and employees of each house; and no payment shall be made for services to the legislature from the treasury, or be in any way authorized to any person, except to an acting officer or employee elected or appointed in pursuance of law.

No bill shall be passed giving any extra compensation to any public officer, servant or employee, agent or contractor, after services shall have been rendered or contract made.

Except as otherwise provided in this Act, no law shall extend the term of any public officer, or increase or diminish his salary or emoluments after his election or appointment, nor permit any officer or employee to draw compensation for more than one office or position.

All bills for raising revenue shall originate in the house of representatives, but the senate may propose or concur with amendments, as in case of other bills.

The general appropriation bill shall embrace nothing but appropriations for the ordinary expenses of the executive, legislative, and judicial departments, interest on the public debt, and for public schools. All other appropriations shall be made by separate bills, each embracing but one subject.

Every order, resolution, or vote to which the concurrence of both houses may be necessary, except on the question of adjournment, or relating solely to the transaction of business of the two houses, shall be presented to the governor, and before it shall take effect be approved by him, or, being disapproved, shall be repassed by two-thirds of both houses, according to the rules and limitations prescribed in case of a bill.

Any person who shall, directly, or indirectly, offer, give, or promise any money or thing of value, testimonial, privilege, or personal advantage to any executive or judicial officer or member of the legislature to influence

him in the performance of any of his public or official duties, shall be deemed guilty of bribery, and be punished by a fine not exceeding \$5,000, or imprisonment not exceeding five years, or both.

The offense of corrupt solicitation of members of the legislature, or of public officers of Porto Rico, or of any municipal division thereof, and any occupation or practice of solicitation of such members or officers to influence their official action, shall be defined by law, and shall be punished by fine and imprisonment.

In case the available revenues of Porto Rico for any fiscal year, including available surplus in the insular treasury, are insufficient to meet all the appropriations made by the legislature for such year, such appropriations shall be paid in the following order, unless otherwise directed by the governor:

First class. The ordinary expenses of the legislative, executive, and judicial departments of the State government, and interest on any public debt, shall first be paid in full.

Second class. Appropriations for all institutions, such as the penitentiary, insane asylum, industrial school, and the like, where the inmates are confined involuntarily, shall next be paid in full.

Third class. Appropriations for education and educational and charitable institutions shall next be paid in full.

Fourth class. Appropriations for any other officer or officers, bureaus or boards, shall next be paid in full.

Fifth class. Appropriations for all other purposes shall next be paid.

That in case there are not sufficient revenues for any fiscal year, including available surplus in the insular treasury, to meet in full the appropriations of said year for all of the said classes of appropriations, then said revenues shall be applied to the classes in the order above named, and if, after the payment of the prior classes in full, there are not sufficient revenues for any fiscal year to pay in full the appropriations for that year for the next class, then, in that event, whatever there may be to apply on account of appropriations for said class shall be distributed among said appropriations pro rata according as the amount of each appropriation of that class shall bear to the total amount of all of said appropriations for that class for such fiscal year.

No appropriation shall be made, nor any expenditure authorized by the legislature, whereby the expenditure of the Government of Porto Rico during any fiscal year shall exceed the total revenue then provided for by law and applicable for such appropriation or expenditure, including any available surplus in the treasury, unless the legislature making such appropriation shall provide for levying a sufficient tax to pay such appropriation or expenditure within such fiscal year. [39 Stat. L. 960.]

SEC. 35. [Qualified electors.] That at the first election held pursuant to this Act the qualified electors shall be those having the qualifications of voters under the present law. Thereafter voters shall be citizens of the United States twenty-one years of age or over and have such additional qualifications as may be prescribed by the legislature of Porto Rico: *Provided*: That no property qualification shall ever be imposed upon or required of any voter. [39 Stat. L. 963.]

SEC. 36. [Resident commissioner to United States.] That the qualified electors of Porto Rico shall at the next general election choose a Resident Commissioner to the United States, whose term of office shall begin on the date of the issuance of his certificate of election and shall continue until the fourth of March, nineteen hundred and twenty-one. At each subsequent election, beginning with the year nineteen hundred and twenty, the qualified electors of Porto Rico shall choose a Resident Commissioner to the United States, whose term of office shall be four years from the fourth of March following such general election, and who shall be entitled to receive official recognition as such Commissioner by all of the departments of the Government of the United States, upon presentation, through the Department of State, of a certificate of election of the Governor of Porto Rico. The Resident Commissioner shall receive a salary, payable monthly by the United States, of \$7,500 per annum. Such Commissioner shall be allowed the same sum for stationery and for the pay of necessary clerk hire as is now allowed to Members of the House of Representatives of the United States; and he shall be allowed the sum of \$500 as mileage for each session of the House of Representatives and the franking privilege granted Members of Congress. No person shall be eligible to election as Resident Commissioner who is not a bona fide citizen of the United States and who is not more than twenty-five years of age, and who does not read and write the English language. In case of a vacancy in the office of Resident Commissioner by death, resignation, or otherwise, the governor, by and with the advice and consent of the senate, shall appoint a Resident Commissioner to fill the vacancy, who shall serve until the next general election and until his successor is elected and qualified. [39 Stat. L. 963.]

SEC. 37. [Legislative authority.] That the legislative authority herein provided shall extend to all matters of a legislative character not locally inapplicable, including power to create, consolidate, and reorganize the municipalities so far as may be necessary, and to provide and repeal laws and ordinances therefor; also the power to alter, amend, modify, or repeal any or all laws and ordinances of every character now in force in Porto Rico or municipality or district thereof in so far as such alteration, amendment, modification, or repeal may be consistent with the provisions of this Act.

No executive department not provided for in this Act shall be created by the legislature, but the legislature may consolidate departments, or abolish any department, with the consent of the President of the United States. [39 Stat. L. 964.]

SEC. 38. [Franchises, rights and privileges — public service commission — interstate commerce — carriers.] That all grants of franchises, rights, and privileges of a public or quasi public nature shall be made by a public-service commission, consisting of the heads of executive departments, the auditor, and two commissioners to be elected by the qualified voters at the first general election to be held under this Act, and at each subsequent general election thereafter. The terms of said elective commissioners elected at the first general election shall commence on the twenty-eighth day following the said general election, and the terms of the said elective

commissioners elected at each subsequent general election shall commence on the second day of January following their election; they shall serve for four years and until their successors are elected and qualified. Their compensation shall be \$8 for each day's attendance on the sessions of the commission, but in no case shall they receive more than \$400 each during any one year. The said commission is also empowered and directed to discharge all the executive functions relating to public-service corporations heretofore conferred by law upon the executive council. Franchises, rights, and privileges granted by the said commission shall not be effective until approved by the governor, and shall be reported to Congress, which hereby reserves the power to annul or modify the same.

The interstate-commerce Act and the several amendments made or to be made thereto, the safety-appliance Acts and the several amendments made or to be made thereto, and the Act of Congress entitled "An Act to amend an Act entitled 'An Act to regulate commerce,' approved February fourth, eighteen hundred and eighty-seven, and all Acts amendatory thereof, by providing for a valuation of the several classes of property of carriers subject thereto and securing information concerning their stocks, bonds, and other securities," approved March first, nineteen hundred and thirteen, shall not apply to Porto Rico.

The Legislative Assembly of Porto Rico is hereby authorized to enact laws relating to the regulation of the rates, tariffs, and service of public carriers by rail in Porto Rico, and the Public-Service Commission hereby created shall have power to enforce such laws under appropriate regulation. [39 Stat. L. 964.]

For the Interstate Commerce Act and the several amendments thereto, mentioned in the text, see 3 Fed. Stat. Ann. 808 and Supplements, and 4 Fed. Stat. Ann. (2d ed.) 331.

For the Safety Appliance Acts and the various amendments thereto, mentioned in the text, see 6 Fed. Stat. Ann. 718 and Supplements, and 8 Fed. Stat. Ann. (2d ed.) 1155.

For the Act of March 1, 1913, ch. 92, mentioned in the text, see 1914 Supp. Fed. Stat. Ann. 204; 4 Fed. Stat. Ann. (2d ed.) 495. This Act amended the Interstate Commerce Act by adding thereto a new section to be known as section 19a.

Sec. 39. [Franchises and privileges — grants as subject to amendment.]
That all grants of franchises and privileges under the section last preceding shall provide that the same shall be subject to amendment, alteration, or repeal, and shall forbid the issue of stocks or bonds except in exchange for actual cash or property at a fair valuation to be determined by the public-service commission equal in amount to the par value of the stocks or bonds issued, and shall forbid the declaring of stock or bond dividends, and in the case of public-service corporations shall provide for the effective regulation of charges thereof and for the purchase or taking of their property by the authorities at a fair and reasonable valuation.

That nothing in this Act contained shall be so construed as to abrogate or in any manner impair or affect the provision contained in section three of the joint resolution approved May first, nineteen hundred, with respect to the buying, selling, or holding of real estate. That the Governor of Porto Rico shall cause to have made and submitted to Congress at the session beginning the first Monday in December, nineteen hundred and

seventeen, a report of all the real estate used for the purposes of agriculture and held either directly or indirectly by corporations, partnerships, or individuals in holdings in excess of five hundred acres. [39 Stat. L. 964.]

For the Res. of May 1, 1900, No. 23, section 3, mentioned in the text, see 5 Fed. Stat. Ann. 776; 7 Fed. Stat. Ann. (2d ed.) 1278.

JUDICIAL DEPARTMENT.

SEC. 40. [Courts — jurisdiction — procedure — appointment of judges.] That the judicial power shall be vested in the courts and tribunals of Porto Rico now established and in operation under and by virtue of existing laws. The jurisdiction of said courts and the form of procedure in them, and the various officers and attaches thereof, shall also continue to be as now provided until otherwise provided by law: *Provided, however,* That the chief justice and associate justices of the supreme court shall be appointed by the President, by and with the advice and consent of the Senate of the United States, and the Legislature of Porto Rico shall have authority, from time to time as it may see fit, not inconsistent with this Act, to organize, modify, or rearrange the courts and their jurisdiction and procedure, except the District Court of the United States for Porto Rico. [39 Stat. L. 965.]

SEC. 41. [United States District Court — appointment of officers — jurisdiction — salaries — vacancies.] That Porto Rico shall constitute a judicial district to be called "the district of Porto Rico." The President, by and with the advice and consent of the Senate, shall appoint one district judge, who shall serve for a term of four years and until his successor is appointed and qualified and whose salary shall be \$5,000 per annum. There shall be appointed in like manner a district attorney, whose salary shall be \$4,000 per annum, and a marshal for said district, whose salary shall be \$3,500 per annum, each for a term of four years unless sooner removed by the President. The district court for said district shall be called "the District Court of the United States for Porto Rico," and shall have power to appoint all necessary officials and assistants, including the clerk, interpreter, and such commissioners as may be necessary, who shall be entitled to the same fees and have like powers and duties as are exercised and performed by United States commissioners. Such district court shall have jurisdiction of all cases cognizable in the district courts of the United States, and shall proceed in the same manner. In addition said district court shall have jurisdiction for the naturalization of aliens and Porto Ricans, and for this purpose residence in Porto Rico shall be counted in the same manner as residence elsewhere in the United States. Said district court shall have jurisdiction of all controversies where all of the parties on either side of the controversy are citizens or subject of a foreign State or States, or citizens of a State, Territory, or District of the United States not domiciled in Porto Rico, wherein the matter in dispute exceeds, exclusive of interest or cost, the sum or value of \$3,000, and of all controversies in which there is a separable controversy involving such jurisdictional amount and in which all of the parties on either side of such separable controversy are citizens or subjects of the character aforesaid: *Provided, That nothing* in this Act shall be deemed to impair the jurisdiction of the District Court

of the United States for Porto Rico to hear and determine all controversies pending in said court at the date of the approval of this Act. Upon the taking effect of this Act the salaries of the judge and officials of the District Court of the United States for Porto Rico, together with the court expenses, shall be paid from the United States revenues in the same manner as in other United States district courts. In case of vacancy or of the death, absence, or other legal disability on the part of the judge of the said District Court of the United States for Porto Rico, the President of the United States is authorized to designate one of the judges of the Supreme Court of Porto Rico to discharge the duties of judge of said court until such absence or disability shall be removed, and thereupon such judge so designated for said service shall be fully authorized and empowered to perform the duties of said office during such absence or disability of such regular judge, and to sign all necessary papers and records as the acting judge of said court, without extra compensation. [39 Stat. L. 965.]

SEC. 42. [Appeals — removal of causes — terms — pleadings.] That the laws of the United States relating to appeals, writs of error and certiorari, removal of causes, and other matters or proceedings as between the courts of the United States and the courts of the several States shall govern in such matters and proceedings as between the district court of the United States and the courts of Porto Rico. Regular terms of said United States district court shall be held at San Juan, commencing on the first Monday in May and November of each year, and also at Ponce on the second Monday in February of each year, and special terms may be held at Mayaguez at such stated times as said judge may deem expedient. All pleadings and proceedings in said court shall be conducted in the English language. The said district court shall be attached to and included in the first circuit of the United States, with the right of appeal and review by said circuit court of appeals in all cases where the same would lie from any district court to a circuit court of appeals of the United States, and with the right of appeal and review directly by the Supreme Court of the United States in all cases where a direct appeal would lie from such district courts. [39 Stat. L. 966.]

SEC. 43. [Writs of error and appeals.] That writs of error and appeals from the final judgments and decrees of the Supreme Court of Porto Rico may be taken and prosecuted to the Circuit Court of Appeals for the First Circuit and to the Supreme Court of the United States, as now provided by law. [39 Stat. L. 966.]

SEC. 44. [Jurors — qualifications — selection, etc., of jury.] That the qualifications of jurors as fixed by the local laws of Porto Rico shall not apply to jurors selected to serve in the District Court of the United States for Porto Rico; but the qualifications required of jurors in said court shall be that each shall be of the age of not less than twenty-one years and not over sixty-five years, a resident of Porto Rico for not less than one year, and have a sufficient knowledge of the English language to enable him to serve as a juror; they shall also be citizens of the United States. Juries for the said court shall be selected, drawn and subject to exemption in accordance with the laws of Congress regulating the same in the United States courts in so far as locally applicable. [39 Stat. L. 966.]

SEC. 45. [Fees, fines, costs and forfeitures.] That all such fees, fines, costs, and forfeitures as would be deposited to the credit of the United States if collected and paid into a district court of the United States shall become revenues of the United States when collected and paid into the District Court of the United States for Porto Rico: *Provided*, That \$500 a year from such fees, fines, costs, and forfeitures shall be retained by the clerk and expended for law library purposes under the direction of the judge. [39 Stat. L. 966.]

SEC. 46. [Officials and assistants — salaries.] That the Attorney General of the United States shall from time to time determine the salaries of all officials and assistants appointed by the United States district court, including the clerk, his deputies, interpreter, stenographer, and other officials and employees, the same to be paid by the United States as other salaries and expenses of like character in United States courts. [39 Stat. L. 966.]

SEC. 47. [Jurors and witnesses — pay.] That jurors and witnesses in the District Court of the United States for Porto Rico shall be entitled to and receive 15 cents for each mile necessarily traveled over any stage line or by private conveyance and 10 cents for each mile over any railway in going to and returning from said courts. But no constructive or double mileage fees shall be allowed by reason of any person being summoned both as witness and juror or as witness in two or more cases pending in the same court and triable at the same term thereof. Such jurors shall be paid \$3 per day and such witnesses \$1.50 per day while in attendance upon the court. [39 Stat. L. 967.]

SEC. 48. [Habeas Corpus — mandamus.] That the supreme and district courts of Porto Rico and the respective judges thereof may grant writs of habeas corpus in all cases in which the same are grantable by the judges of the district courts of the United States, and the district courts may grant writs of mandamus in all proper cases. [39 Stat. L. 967.]

SEC. 49. [Judges, marshals and secretaries — appointment.] That hereafter all judges, marshals, and secretaries of courts now established or that may hereafter be established in Porto Rico, and whose appointment by the President is not provided for by law, shall be appointed by the governor, by and with the advice and consent of the Senate of Porto Rico. [39 Stat. L. 967.]

MISCELLANEOUS PROVISIONS.

SEC. 50. [Salaries — payment — bond.] That, except as in this Act otherwise provided, the salaries of all the officials of Porto Rico not appointed by the President, including deputies, assistants, and other help, shall be such and be so paid out of the revenues of Porto Rico as shall from time to time be determined by the Legislature of Porto Rico and approved by the governor; and if the legislature shall fail to make an appropriation for such salaries, the salaries theretofore fixed shall be paid without the necessity of further appropriations therefor. The salaries of all officers and all expenses of the offices of the various officials of Porto

Rico appointed as herein provided by the President shall also be paid out of the revenues of Porto Rico on warrant of the auditor, counter-signed by the governor. The annual salaries of the following-named officials appointed by the President and so to be paid shall be: The governor, \$10,000; in addition thereto shall be entitled to the occupancy of the buildings heretofore used by the chief executive of Porto Rico, with the furniture and effects therein, free of rental; heads of executive departments, \$5,000; chief justice of the supreme court, \$6,500; associate justices of the supreme court, \$5,500 each.

Where any officer whose salary is fixed by this act is required to give a bond, the premium thereof shall be paid from the insular treasury. [39 Stat. L. 967.]

SEC. 51. [Salaries of municipal officials — payment.] That the provisions of the foregoing section shall not apply to municipal officials; their salaries and the compensation of their deputies, assistants, and other help, as well as all other expenses incurred by the municipalities, shall be paid out of the municipal revenues, in such manner as the legislature shall provide. [39 Stat. L. 967.]

SEC. 52. [Continuance of certain persons in office — abolishment of certain offices.] That wherever in this Act offices of the insular government of Porto Rico are provided for under the same names as in the heretofore existing Acts of Congress affecting Porto Rico, the present incumbents of those offices shall continue in office in accordance with the terms and at the salaries prescribed by this Act, excepting the heads of those departments who are to be appointed by the governor and who shall continue in office only until their successors are appointed and have qualified. The offices of secretary of Porto Rico and director of labor, charities, and correction are hereby abolished. Authority is given to the respective appointing authorities to appoint and commission persons to fill the new offices created by this Act. [39 Stat. L. 967.]

SEC. 53. [Transfer of bureau or office.] That any bureau or office belonging to any of the regular departments of the government, or hereafter created, or not assigned, may be transferred or assigned to any department by the governor with the approval of the Senate of Porto Rico. [39 Stat. L. 968.]

SEC. 54. [Deeds, etc. — acknowledgment.] That deeds and other instruments affecting land situate in the District of Columbia, or any other territory or possession of the United States, may be acknowledged in Porto Rico before any notary public appointed therein by proper authority, or any officer therein who has ex officio the powers of a notary public: *Provided*, That the certificate by such notary shall be accompanied by the certificate of the executive secretary of Porto Rico to the effect that the notary taking such acknowledgment is in fact such notarial officer. [39 Stat. L. 968.]

SEC. 55. [Jurisdiction of existing courts over pending matters.] That nothing in this Act shall be deemed to impair or interrupt the jurisdiction

of existing courts over matters pending therein upon the approval of this Act, which jurisdiction is in all respects hereby continued, the purpose of this Act being to preserve the integrity of all of said courts and their jurisdiction until otherwise provided by law, except as in this Act otherwise specifically provided. [39 Stat. L. 968.]

SEC. 56. [When Act becomes effective.] That this Act shall take effect upon approval, but until its provisions shall severally become operative, as hereinbefore provided, the corresponding legislative and executive functions of the government in Porto Rico shall continue to be exercised and in full force and operation as now provided by law; and the executive council shall, until the assembly and organization of the Legislature of Porto Rico as herein provided, consist of the attorney general, the treasurer, the commissioner of the interior, the commissioner of education, the commissioner of health, and the commissioner of agriculture and labor, and the five additional members as now provided by law. And any functions assigned to the Senate of Porto Rico by the provisions of this Act shall, until this said senate has assembled and organized as herein provided, be exercised by the Executive Council as thus constituted: *Provided, however,* That all appointments made by the governor, by and with the advice and consent of the Executive Council as thus constituted, in the Executive Council as authorized by section thirteen of this Act or in the office of Executive Secretary of Porto Rico, shall be regarded as temporary and shall expire not later than twenty days from and after the assembly and organization of the Legislature hereinbefore provided, unless said appointments shall be ratified and made permanent by the said Senate of Porto Rico. [39 Stat. L. 968.]

SEC. 57. [Existing laws and ordinances — continuance in force.] That the laws and ordinances of Porto Rico now in force shall continue in force and effect, except as altered, amended, or modified herein, until altered, amended, or repealed by the legislative authority herein provided for Porto Rico or by Act of Congress of the United States; and such legislative authority shall have power, when not inconsistent with this Act, by due enactment to amend, alter, modify, or repeal any law or ordinance, civil or criminal continued in force by this Act as it may from time to time see fit. [39 Stat. L. 968.]

SEC. 58. [Laws continued in force — repeal of conflicting laws.] That all laws or parts of laws applicable to Porto Rico not in conflict with any of the provisions of this Act, including the laws relating to tariffs, customs, and duties on importations into Porto Rico prescribed by the Act of Congress entitled "An Act temporarily to provide revenues and a civil government for Porto Rico and for other purposes," approved April twelfth, nineteen hundred, are hereby continued in effect, and all laws and parts of laws inconsistent with the provisions of this Act are hereby repealed. [39 Stat. L. 968.]

For the Act of April 12, 1900, ch. 191, mentioned in this section, see 5 Fed. Stat. Ann. 762; 7 Fed. Stat. Ann. (2d ed.) 1259.

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[SEC. 1.] [Official Postal Guide — contracts for publication.] * * *

Hereafter contracts let for the publication of the Official Postal Guide shall provide for the supply of such copies as may be required for public use by the several executive departments and other Government establishments at a price not exceeding the cost of such guides to the Post Office Department. [39 Stat. L. 108.]

This is from the Legislative, Executive and Judicial Appropriation Act of May 10, 1916, ch. 117.

An Act To amend the Act approved June twenty-fifth, nineteen hundred and ten, authorizing the postal savings system, and for other purposes.

[*Act of May 18, 1916, ch. 126, 39 Stat. L. 159.*]

[**SEC. 1.**] [**Postal savings depositories — restriction of deposits — former Act amended.**] That such part of section six of the Act approved June twenty-fifth, nineteen hundred and ten, authorizing a system of postal savings depositories, as reads “but no one shall be permitted to deposit more than \$100 in any one calendar month” is hereby amended to read as follows: “but the balance to the credit of any person, upon which interest is payable, shall not exceed \$1,000, exclusive of accumulated interest”; and said Act is further amended so that the proviso in section seven thereof shall read as follows: “*Provided, That the board of trustees may, in their discretion, and under such regulations as such board may promulgate, accept additional deposits not to exceed in the aggregate \$1,000 for each depositor, but upon which no interest shall be paid.*” [39 Stat. L. 159.]

For the Act of June 25, 1910, ch. 386, §§ 6 and 7, amended by this section, see 1912 Supp. Fed. Stat. Ann. 295, 296; 8 Fed. Stat. Ann. (2d ed.) 243.

SEC. 2. [Postal savings funds — disposition — investment — “territory” — “bank.”] That postal savings funds received under the provisions of this Act shall be deposited in solvent banks, whether organized under National or State laws, and whether member banks or not of the Federal reserve system established by the Act approved December twenty-third, nineteen hundred and thirteen, being subject to National or State supervision and examination, and the sums deposited shall bear interest at the rate of not less than two and one-fourth per centum per annum, which rate shall be uniform throughout the United States and Territories thereof; but five per centum of such fund shall be withdrawn by the board of trustees and kept with the Treasurer of the United States, who shall be treasurer of the board of trustees, in lawful money as a reserve. The board of trustees shall take from such banks such security in public bonds or other securities, authorized by Act of Congress or supported by the taxing power, as the board may prescribe, approve, and deem sufficient and necessary to insure the safety and prompt payment of such deposits on demand. The funds received at the postal savings depository offices in each city, town, village, and other locality shall be deposited in banks located therein (substantially in proportion to the capital and surplus of each such bank) willing to receive such deposits under the terms of this Act and the regulations made by authority thereof: *Provided, however,* If one or more member banks of the Federal reserve system established by the Act approved December twenty-third, nineteen hundred and thirteen, exists in the city, town, village, or locality where the postal savings deposits are made, such deposits shall be placed in such qualified member banks substantially in proportion to the capital and surplus of each such bank, but if such member banks fail to qualify to receive such deposits, then any other bank located therein may, as hereinbefore provided, qualify and receive the same. If no such member bank and no other qualified bank

exists in any city, town, village, or locality, or if none where such deposits are made will receive such deposits on the terms prescribed, then such funds shall be deposited under the terms of this Act in the bank most convenient to such locality. If no such bank in any State or Territory is willing to receive such deposits on the terms prescribed, then such funds shall be deposited with the treasurer of the board of trustees and shall be counted in making up the reserve of five per centum. Such funds may be withdrawn from the treasurer of said board of trustees, and all other postal savings funds, or any part of such funds, may be at any time withdrawn from the banks and savings depository offices for the repayment of postal savings depositors when required for that purpose. If at any time the postal savings deposits in any State or Territory shall exceed the amount which the qualified banks therein are willing to receive under the terms of this Act, and such excess amount is not required to make up the reserve fund of five per centum hereinbefore provided for, the board of trustees may invest all or any part of such excess amount in bonds or other securities of the United States. When, in the judgment of the President, the general welfare and interests of the United States so require, the board of trustees may invest all or any part of the postal savings funds, except the reserve fund of five per centum herein provided for, in bonds or other securities of the United States. The board of trustees may in its discretion purchase from the holders thereof bonds which have been or may be issued under the provisions of section ten of the Act of June twenty-fifth, nineteen hundred and ten. Interest and profit accruing from the deposits or investment of postal savings funds shall be applied to the payment of interest due to postal savings depositors, as hereinbefore provided, and the excess thereof, if any, shall be covered into the Treasury of the United States as a part of the postal revenue: *Provided further*, That postal savings funds in the treasury of said board shall be subject to disposition as provided in this Act, and not otherwise: *And provided further*, That the board of trustees may at any time dispose of bonds held as postal savings investments and use the proceeds to meet withdrawals of deposits by depositors. For the purposes of this Act the word "Territory" as used herein shall be held to include the District of Columbia, the District of Alaska, and Porto Rico, and the word "bank" shall be held to include savings banks and trust companies doing a banking business. [39 Stat. L. 159.]

For the Act of Dec. 23, 1913, ch. 6, mentioned in the text, see 1914 Supp. Fed. Stat. Ann. 260; 6 Fed. Stat. Ann. (2d ed.) 817.

For the Act of June 25, 1910, ch. 386, § 10, mentioned in the text, see 1912 Supp. Fed. Stat. Ann. 297; 8 Fed. Stat. Ann. (2d ed.) 246.

SEC. 3. [Empty mail bags — return to mails — pay for railroad transportation.] That the Postmaster General, in cases of emergency, between October first and April first of any year, may hereafter return to the mails empty mail bags, theretofore withdrawn therefrom as required by law, and for such times may pay for their railroad transportation out of the appropriation for inland transportation by railroad routes at not exceeding the rate per pound per mile as shown by the last adjustment for mail service on the route over which they may be carried, and pay for necessary cartage out of the appropriation for freight or expressage. [39 Stat. L. 160.]

SEC. 4. [Weights of mails — ascertainment — weighing period.] That when, during a weighing period, on account of floods or other causes, interruptions in service occur on railroad routes and the weights of mail are decreased below the normal, or where there is an omission to take weights, the Postmaster General, for the purpose of readjusting compensation on such railroad routes as are affected thereby, is hereafter authorized, in his discretion, to add to the weights of mails ascertained on such routes during that part of the weighing period when conditions are shown to have been normal the estimated weights for that part of the weighing period when conditions are shown to have been not normal, or where there has been an omission to take weights, based upon the average of weights taken during that part of the weighing period during which conditions are shown to have been normal, the actual weights and the estimated weights to form the basis for the average weight per day upon which to readjust the compensation according to law on such railroad routes for the transportation of the mails, notwithstanding the provision of the Act of Congress approved March third, nineteen hundred and five, requiring that the average weight shall be ascertained by the actual weighing of the mails for such a number of successive working days, not less than ninety, as the Postmaster General may direct: *Provided further*, That readjustments from July first, nineteen hundred and thirteen, may be made under this provision on routes in the first section affected by the floods in the Ohio Valley and tributary territories, commencing about March twenty-fifth, nineteen hundred and thirteen. [39 Stat. L. 161.]

For the Act of March 3, 1905, ch. 1480, § 1, mentioned in this section, see 10 Fed. Stat. Ann. 336; 8 Fed. Stat. Ann. (2d ed.) 204.

SEC. 5. [Mail transportation — compensation — adjustment — former Act repealed.] That so much of section four of "An Act making appropriations for the service of the Post Office Department for the fiscal year ending June thirtieth, nineteen hundred and thirteen, and for other purposes," approved August twenty-fourth, nineteen hundred and twelve, as provides that no adjustment shall be made unless the diverted mails equal at least ten per centum of the average daily weight on any of the routes affected is hereby repealed. [39 Stat. L. 161.]

For the Act of Aug. 24, 1912, ch. 389, § 4, in part repealed by this section, see 1914 Supp. Fed. Stat. Ann. 316; 8 Fed. Stat. Ann. (2d ed.) 209.

SEC. 6. [Mail contracts — award — lowest bidder — R. S. sec. 3949 amended.] That section thirty-nine hundred and forty-nine of the Revised Statutes be amended to read as follows:

"All contracts for carrying the mail shall be in the name of the United States and shall be awarded to the lowest bidder tendering sufficient guaranties for faithful performance in accordance with the terms of the advertisement: *Provided, however*, That such contracts require due celerity, certainty, and security in the performance of the service; but the Postmaster General shall not be bound to consider the bid of any person who has willfully or negligently failed to perform a former contract." [39 Stat. L. 161.]

For R. S. sec. 3949, amended by this section, see 5 Fed. Stat. Ann. 883; 8 Fed. Stat. Ann. (2d ed.) 154.

SEC. 7. [Unreasonable or fraudulent bids.] That whenever in the judgment of the Postmaster General the bids received for any star route are exorbitant or unreasonable, or whenever he has reason to believe that a combination of bidders has been entered into to fix the rate for star-route service, the Postmaster General be, and he is hereby, authorized, out of the appropriation for inland transportation by star routes, to employ and use such means or methods to provide the desired service as he may deem expedient, without reference to existing law or laws respecting the employment of personal service or the procurement of conveyances, materials, or supplies. [39 Stat. L. 161.]

SEC. 8. [Temporary mail contracts.] That whenever an accepted bidder shall fail to enter into contract, or a contractor on any mail route shall fail or refuse to perform the service on said route according to his contract, or when a new route shall be established or new service required, or when, from any other cause, there shall not be a contractor legally bound or required to perform such service, the Postmaster General may make a temporary contract for carrying the mail on such route, without advertisement, for such period as may be necessary, not in any case exceeding one year, until the service shall have commenced under a contract made according to law: *Provided*, That the cost of temporary service rendered necessary by reason of the failure of any accepted bidder to enter into contract or a contractor to perform service shall be charged to such bidder or contractor. [39 Stat. L. 161.]

SEC. 9. [Mail contracts — money due contractor — lien.] That if any person shall hereafter perform any service for any contractor or subcontractor in carrying the mail, he shall, upon filing in the department his contract for such service and satisfactory evidence of its performance, thereafter have a lien on any money due such contractor or subcontractor for such service to the amount of same; and if such contractor or subcontractor shall fail to pay the party or parties who have performed service as aforesaid the amount due for such service within two months after the expiration of the month in which such service shall have been performed the Postmaster General may cause the amount due to be paid said party or parties and charged to the contractor: *Provided*, That such payment shall not in any case exceed the rate of pay per annum of the contractor or subcontractor. [39 Stat. L. 162.]

Section 10 of this Act amends Penal Laws, § 198, and is given in PENAL LAWS, ante, p. 581.

SEC. 11. [First-class mail matter — limit of weight.] That the limit of weight of mail matter of the first class shall be the same as is applicable to mail of the fourth class: *Provided*, That no article or package exceeding four pounds in weight shall be admitted to the mails under the penalty privilege unless it comes within the exceptions named in the Acts of June eighth, eighteen hundred and ninety-six (chapter three hundred and seventy, Twenty-ninth Statutes, page two hundred and sixty-two), and June twenty-sixth, nineteen hundred and six (chapter thirty-five hundred

and forty-six, Thirty-fourth Statutes, page four hundred and seventy-seven). [39 Stat. L. 162.]

For the Act of June 8, 1896, ch. 370, mentioned in the text, see 5 Fed. Stat. Ann. 834; 8 Fed. Stat. Ann. (2d ed.) 105.

For the provisions of the Act of June 26, 1906, ch. 3546, § 1, mentioned in the text, see 1909 Supp. Fed. Stat. Ann. 521; 8 Fed. Stat. Ann. (2d ed.) 129.

SEC. 12. [Postage stamps — cancelling.] That postage stamps affixed to all mail matter or to stamped envelopes in which the same is enclosed shall, when deposited for mailing or delivery, be defaced by the postmaster at the mailing office: *Provided*, That when practicable postage stamps may be furnished to postmasters precanceled by printing on them the name of the post office at which they are to be used, under such regulations as the Postmaster General may prescribe. [39 Stat. L. 162.]

SEC. 13. [Postage stamps — affixing — mail matter in bulk — former act amended.] That section two of the Act of April twenty-eighth, nineteen hundred and four (chapter seventeen hundred and fifty-nine, Thirty-third Statutes, page four hundred and forty), be amended to read as follows:

“ That under such regulations as the Postmaster General may establish for the collection of the lawful revenue and for facilitating the handling of such matter in the mails it shall be lawful to accept for transmission in the mails, without postage stamps affixed, quantities of not less than three hundred identical pieces of third-class matter and of second-class matter, and two hundred and fifty identical pieces of fourth-class matter, and packages of money and securities mailed under postage at the first or fourth-class rate by the Treasury Department: *Provided*, That postage shall be fully prepaid thereon at the rate required by law for a single piece of such matter.” [39 Stat. L. 162.]

For the Act of April 28, 1904, ch. 1759, § 2, amended by this section, see 10 Fed. Stat. Ann. 335; 8 Fed. Stat. Ann. (2d ed.) 128.

SEC. 14. [Postmasters' claim for losses — navy mail clerks — adjustment — former Act amended.] That the Act approved January twenty-first, nineteen hundred and fourteen (Thirty-eighth Statutes, page two hundred and seventy-eight), authorizing the Postmaster General to adjust certain claims of postmasters for loss by burglary, fire, or other unavoidable casualty, be so amended as to include Navy mail clerks and assistant Navy mail clerks. [39 Stat. L. 163.]

For the Act of Jan. 21, 1914, ch. 12, amended by this section, see 1916 Supp. Fed. Stat. Ann. 189; 8 Fed. Stat. Ann. (2d ed.) 57.

SEC. 15. [Contract stations — contracts for conduct of.] That hereafter the Postmaster General may enter into contracts for the conduct of contract stations for a term not exceeding two years. [39 Stat. L. 163.]

SEC. 16. [Fourth-class post offices — reclassification — salary of postmasters.] That, when the total compensation of any postmaster at a post

office of the fourth class for four consecutive quarters, shall amount to \$1,000, exclusive of commissions on money orders issued, and the receipts of such post office for the same period shall aggregate as much as \$1,900, the Auditor for the Post Office Department shall so report to the Postmaster General, who shall, in pursuance of such report, assign such post office to its proper class, to become effective at the beginning of the next succeeding quarterly period, and fix the salary of the postmaster accordingly. [39 Stat. L. 168.]

As originally enacted, this section contained, after the initial word "That," a clause as follows: "on and after July first, nineteen hundred and sixteen." This was struck out by the Postal Service Appropriation Act of July 28, 1916, ch. 261, § 1, 39 Stat. L. 418.

SEC. 17. [Repeal of conflicting provisions.] That all laws or parts of laws in conflict with the provisions of this Act are hereby repealed. [39 Stat. L. 163.]

An Act To provide that the United States shall aid the States in the construction of rural post roads, and for other purposes.

[Act of July 11, 1916, ch. 241, 39 Stat. L. 355.]

[SEC. 1.] [Rural post roads — federal aid — freedom from tolls.] That the Secretary of Agriculture is authorized to cooperate with the States, through their respective State highway departments, in the construction of rural post roads; but no money apportioned under this Act to any State shall be expended therein until its legislature shall have assented to the provisions of this Act, except that, until the final adjournment of the first regular session of the legislature held after the passage of this Act, the assent of the governor of the State shall be sufficient. The Secretary of Agriculture and the State highway department of each State shall agree upon the roads to be constructed therein and the character and method of construction: *Provided*, That all roads constructed under the provisions of this Act shall be free from tolls of all kinds. [39 Stat. L. 355.]

SEC. 2. [Definitions — "rural post roads" — "State highway department" — "construction" — "properly maintained."] That for the purpose of this Act the term "rural post road" shall be construed to mean any public road over which the United States mails are now or may hereafter be transported, excluding every street and road in a place having a population, as shown by the latest available Federal census, of two thousand five hundred or more, except that portion of any such street or road along which the houses average more than two hundred feet apart; the term "State highway department" shall be construed to include any department of another name, or commission, or official or officials, of a State empowered, under its laws, to exercise the functions ordinarily exercised by a State highway department; the term "construction" shall be construed to include reconstruction and improvement of roads; "properly

maintained " as used herein shall be construed to mean the making of needed repairs and the preservation of a reasonably smooth surface considering the type of the road; but shall not be held to include extraordinary repairs, nor reconstruction; necessary bridges and culverts shall be deemed parts of the respective roads covered by the provisions of this Act. [39 Stat. L. 356.]

SEC. 3. [Appropriation — apportionment.] That for the purpose of carrying out the provisions of this Act there is hereby appropriated, out of any money in the Treasury not otherwise appropriated, for the fiscal year ending June thirtieth, nineteen hundred and seventeen, the sum of \$5,000,000; for the fiscal year ending June thirtieth, nineteen hundred and eighteen, the sum of \$10,000,000; for the fiscal year ending June thirtieth, nineteen hundred and nineteen, the sum of \$15,000,000; for the fiscal year ending June thirtieth, nineteen hundred and twenty, the sum of \$20,000,000; and for the fiscal year ending June thirtieth, nineteen hundred and twenty-one, the sum of \$25,000,000. So much of the appropriation apportioned to any State for any fiscal year as remains unexpended at the close thereof shall be available for expenditure in that State until the close of the succeeding fiscal year, except that amounts apportioned for any fiscal year to any State which has not a State highway department shall be available for expenditure in that State until the close of the third fiscal year succeeding the close of the fiscal year for which such apportionment was made. Any amount apportioned under the provisions of this Act unexpended at the end of the period during which it is available for expenditure under the terms of this section shall be reapportioned, within sixty days thereafter, to all the States in the same manner and on the same basis, and certified to the Secretary of the Treasury and to the State highway departments and to the governors of States having no State highway departments in the same way as if it were being apportioned under this Act for the first time: *Provided*, That in States where the constitution prohibits the State from engaging in any work of internal improvements, then the amount of the appropriation under this Act apportioned to any such State shall be turned over to the highway department of the State or to the governor of said State to be expended under the provisions of this Act and under the rules and regulations of the Department of Agriculture, when any number of counties in any such State shall appropriate or provide the proportion or share needed to be raised in order to entitle such State to its part of the appropriation apportioned under this Act. [39 Stat. L. 356.]

SEC. 4. [Deductions from appropriations.] That so much, not to exceed three per centum, of the appropriation for any fiscal year made by or under this Act as the Secretary of Agriculture may estimate to be necessary for administering the provisions of this Act shall be deducted for that purpose, available until expended. Within sixty days after the close of each fiscal year the Secretary of Agriculture shall determine what part, if any, of the sums theretofore deducted for administering the provisions of this Act will not be needed for that purpose and apportion such part,

if any, for the fiscal year then current in the same manner and on the same basis, and certify it to the Secretary of the Treasury and to the State highway departments, and to the governors of States having no State highway departments, in the same way as other amounts authorized by this Act to be apportioned among all the States for such current fiscal year. The Secretary of Agriculture, after making the deduction authorized by this section, shall apportion the remainder of the appropriation for each fiscal year among the several States in the following manner: One-third in the ratio which the area of each State bears to the total area of all the States; one-third in the ratio which the population of each State bears to the total population of all the States, as shown by the latest available Federal census; one-third in the ratio which the mileage of rural delivery routes and star routes in each State bears to the total mileage of rural delivery routes and star routes in all the States, at the close of the next preceding fiscal year, as shown by the certificate of the Postmaster General, which he is directed to make and furnish annually to the Secretary of Agriculture. [39 Stat. L. 356.]

SEC. 5. [Certificates by Secretary of Agriculture.] That within sixty days after the approval of this Act the Secretary of Agriculture shall certify to the Secretary of the Treasury and to each State highway department and to the governor of each State having no State highway department the sum which he has estimated to be deducted for administering the provisions of this Act and the sum which he had apportioned to each State for the fiscal year ending June thirtieth, nineteen hundred and seventeen, and on or before January twentieth next preceding the commencement of each succeeding fiscal year shall make like certificates for such fiscal year. [39 Stat. L. 357.]

SEC. 6. [Project statements, etc.—submission by States — approval — payment of money apportioned.] That any State desiring to avail itself of the benefits of this Act shall, by its State highway department, submit to the Secretary of Agriculture project statements setting forth proposed construction of any rural post road or roads therein. If the Secretary of Agriculture approve a project, the State highway department shall furnish to him such surveys, plans, specifications, and estimates therefor as he may require: *Provided, however,* That the Secretary of Agriculture shall approve only such projects as may be substantial in character and the expenditure of funds hereby authorized shall be applied only to such improvements. Items included for engineering, inspection, and unforeseen contingencies shall not exceed ten per centum of the total estimated cost of the work. If the Secretary of Agriculture approve the plans, specifications, and estimates, he shall notify the State highway department and immediately certify the fact to the Secretary of the Treasury. The Secretary of the Treasury shall thereupon set aside the share of the United States payable under this Act on account of such project, which shall not exceed fifty per centum of the total estimated cost thereof. No payment of any money apportioned under this Act shall be made on any project until such statement of the project, and the plans, specifications, and esti-

mates therefor, shall have been submitted to and approved by the Secretary of Agriculture.

When the Secretary of Agriculture shall find that any project so approved by him has been constructed in compliance with said plans and specifications he shall cause to be paid to the proper authority of said State the amount set aside for said project: *Provided*, That the Secretary of Agriculture may, in his discretion, from time to time make payments on said construction as the same progresses, but these payments including previous payments, if any, shall not be more than the United States pro rata part of the value of the labor and materials which have been actually put into said construction in conformity to said plans and specifications; nor shall any such payment be in excess of \$10,000 per mile, exclusive of the cost of bridges of more than twenty feet clear span. The construction work and labor in each State shall be done in accordance with its laws, and under the direct supervision of the State highway department subject to the inspection and approval of the Secretary of Agriculture and in accordance with the rules and regulations made pursuant to this Act.

The Secretary of Agriculture and the State highway department of each State may jointly determine at what times, and in what amounts, payments, as work progresses, shall be made under this Act. Such payments shall be made by the Secretary of the Treasury, on warrants drawn by the Secretary of Agriculture, to such official, or officials, or depository, as may be designated by the State highway department and authorized under the laws of the State to receive public funds of the State or county. [39 Stat. L. 357.]

SEC. 7. [Maintenance of roads.] To maintain the roads constructed under the provisions of this Act shall be the duty of the States, or their civil subdivisions, according to the laws of the several States. If at any time the Secretary of Agriculture shall find that any road in any State constructed under the provisions of this Act is not being properly maintained he shall give notice of such fact to the highway department of such State and if within four months from the receipt of said notice said road has not been put in a proper condition of maintenance then the Secretary of Agriculture shall thereafter refuse to approve any project for road construction in said State, or the civil subdivision thereof, as the fact may be, whose duty it is to maintain said road, until it has been put in a condition of proper maintenance. [39 Stat. L. 358.]

Section 8 of this Act, relating to roads in and adjacent to national forests, is given in *TIMBER LANDS AND FOREST RESERVES*, *post*, p. 836.

SEC. 9. [Clerks — offices — supplies.] That out of the appropriations made by or under this Act, the Secretary of Agriculture is authorized to employ such assistants, clerks, and other persons in the city of Washington and elsewhere, to be taken from the eligible lists of the Civil Service Commission, to rent buildings outside of the city of Washington, to purchase such supplies, material, equipment, office fixtures, and apparatus, and to incur such travel and other expense as he may deem necessary for carrying out the purposes of this Act. [39 Stat. L. 359.]

Sec. 10. [Rules and regulations.] That the Secretary of Agriculture is authorized to make rules and regulations for carrying out the provisions of this Act. [39 Stat. L. 359.]

Sec. 11. [Time of taking effect of Act.] That this Act shall be in force from the date of its passage. [39 Stat. L. 359.]

An Act Making appropriations for the service of the Post Office Department for the fiscal year ending June thirtieth, nineteen hundred and seventeen, and for other purposes.

[Act of July 28, 1916, ch. 261, 39 Stat. L. 412.]

[Sec. 1.] [Injured postal employees — substitutes — leave of absence — sick and death benefits — military service of postal employees.] * * * That hereafter the Postmaster General shall have authority to employ acting employees in place of all employees or substitutes hereinafter mentioned who are injured while on duty, who shall be granted leave of absence with full pay during the period of disability, but not exceeding one year, then at the rate of fifty per centum of the employee's salary for the period of disability exceeding one year, but not exceeding twelve months additional, and the Postmaster General is authorized to pay the sum of \$2,000, which shall be exempt from payment of debts of the deceased, to the legal representatives, for the benefit of wife, children, or dependent relatives, of any railway postal clerk, substitute railway postal clerk, supervisory official of the Railway Mail Service, post-office inspector, letter carrier in the City Delivery Service, rural letter carrier, post-office clerk, special-delivery messenger, post-office laborer or any classified civil-service employee in post offices of the first and second classes who shall be killed while on duty, or who, being injured while on duty, shall die within one year thereafter as the result of such injury: *Provided*, That no compensation shall be paid any such employee for any injury occasioned by his own negligence. * * *

That the Postmaster General shall not approve or continue any rule or regulation which terminates the employment of any employee by reason of absence on account of illness for a period of less than one year, and that any postal employee who has entered the military service of the United States or who shall hereafter enter it shall, upon being honorably discharged therefrom, be permitted to resume the position in the postal department which he left to enter such military service. [39 Stat. L. 413.]

[Clerks — appointment — assignment — former Act amended.] That section five of the Act approved August twenty-fourth, nineteen hundred and twelve, entitled "An Act making appropriations for the service of the Post Office Department for the fiscal year ending June thirtieth, nineteen hundred and thirteen, and for other purposes," be, and the same is hereby, amended to include employees of first and second class post offices designated as "Special clerks." * * * and hereafter the appointment and assignment of clerks hereunder shall be so made during each fiscal year as not to

involve a greater aggregate expenditure than the sum appropriated; and to enable the Postmaster General to carry out the provisions of the Act of March second, nineteen hundred and seven, classifying clerks and city letter carriers in first and second class post offices, he may hereafter exceed the number of clerks appropriated for particular grades: *Provided*, That the number of clerks in the aggregate as herein authorized be not exceeded. [39 Stat. L. 416.]

For the Act of Aug. 24, 1912, ch. 389, § 5, amended by the text, see 1914 Supp. Fed. Stat. Ann. 317; 8 Fed. Stat. Ann. (2d ed.) 76.

For the Act of March 2, 1907, ch. 2513, mentioned in the text, see 1909 Supp. Fed. Stat. Ann. 522; 8 Fed. Stat. Ann. (2d ed.) 71.

[Employment of clerks, etc., on holidays — pay.] * * * That hereafter when the needs of the Postal Service require the employment on holidays of clerks in first and second class post offices and letter carriers in the City Delivery Service, the employees who are required and ordered to perform holiday work shall be allowed compensatory time on one of the thirty days following the holiday on which they perform such service: *Provided*, That for the purpose of this Act holidays shall be New Year's Day (January first); Washington's Birthday (February twenty-second); Memorial Day (May thirtieth); Independence Day (July fourth); the first Monday in September, known as Labor Day; Christmas (December twenty-fifth); and such other days as the President of the United States may set apart as fast or thanksgiving days. [39 Stat. L. 416.]

[Letter carriers — collection duty and delivery duty — salary.] * * * That hereafter there shall be no distinction in salary made between letter carriers assigned to collection duty and letter carriers assigned to delivery duty: *And provided further*, That letter carriers whose salaries have been reduced as the result of any order of the Post Office Department, making the maximum salary \$1,000 to be paid letter carriers assigned to collection duty, shall be restored to their former grades. [39 Stat. L. 417.]

[Proposals for carrying mail — R. S. sec. 3944 amended.] * * * That section thirty-nine hundred and forty-four, Revised Statutes, is hereby amended by the elimination of the words "or the Second Assistant Postmaster General," and the Act of May seventeenth, eighteen hundred and seventy-eight, is hereby amended by the substitution of the words "Postmaster General" for the words "Second Assistant Postmaster General" wherever they occur. [39 Stat. L. 418.]

For R. S. sec. 3944, amended by the text, see 5 Fed. Stat. Ann. 880; 8 Fed. Stat. Ann. (2d ed.) 152.

[Mail messenger service.] * * * That postmasters may be designated by the Postmaster General as disbursing officers for the payment of mail messengers and others engaged under their supervision in transporting the mails: *Provided further*, That, in the discretion of the Postmaster General, postmasters, assistant postmasters, and clerks at post offices of the third and fourth classes may enter into contracts for the performance of mail

messenger services, and allowances may be made therefor from this appropriation: *Provided further*, That the total amount payable under such contract to any postmaster, assistant postmaster, or clerk shall not exceed \$300.. in any one year. [39 Stat. L. 418.]

[Undelivered letters — R. S. sec. 3938 amended.] * * * That section thirty-nine hundred and thirty-eight of the Revised Statutes is hereby amended to read as follows:

“All letters of domestic origin which can not be delivered by postmasters shall be sent to the Post Office Department or to a post office designated by the Postmaster General and such as contain inclosures of value, other than correspondence, shall be recorded. If the sender or addressee can not be identified, such letters shall be held for a period of one year awaiting reclamation. If within one year they have not been claimed, they shall be disposed of as the Postmaster General may direct. All other undeliverable letters shall be disposed of without record and not held for reclamation.” [39 Stat. L. 418.]

For R. S. sec. 3938, amended by the text, see 5 Fed. Stat. Ann. 877; 8 Fed. Stat. Ann. (2d ed.) 150.

[Railway mail clerks — assignments — promotions — deadheading.] * * * That clerks assigned as clerks in charge of crews consisting of more than one clerk shall be clerks of grades five to ten, inclusive, and may be promoted one grade only after three years' satisfactory and faithful service in such capacity: *Provided further*, That railway postal clerks shall be credited with full time when deadheading under orders of the department. [39 Stat. L. 419.]

[Railway postal clerks — vacations — pay — substitutes — former Acts repealed.] * * * That the Act of March third, nineteen hundred and one (Thirty-first Statutes, page eleven hundred and five), be amended to read as follows: “The Postmaster General may allow railway postal clerks an annual vacation of fifteen days, with pay”: *And provided further*, That the Act of March fourth, nineteen hundred and thirteen (Thirty-seventh Statutes, page seven hundred and ninety-eight), be amended to read as follows: “That hereafter the Postmaster General may, in his discretion, under such regulations as he may provide, allow any railway postal clerk leave of absence with pay for a period not exceeding thirty days, with the understanding that his duties will be performed without expense to the Government during the period for which leave is granted, he to provide a substitute at his own expense.” [39 Stat. L. 420.]

The proviso of the Act of March 3, 1901, ch. 851, § 1, 31 Stat. L. 1105, amended by the text, was as follows:

“The Postmaster-General may allow railway postal clerks whose duties require them to work six days or more per week, fifty-two weeks per year, an annual vacation of fifteen days, with pay.”

This had been superseded, prior to its amendment by the text, by the Act of March 1, 1909, ch. 232, § 1, which was in the same words but with the addition of the word “hereafter,” which rendered it permanent. See 1909 Supp. Fed. Stat. Ann. 526; 8 Fed. Stat. Ann. (2d ed.) 206.

For the provisions of the Act of March 4, 1913, ch. 143, amended by the text, see 1914 Supp. Fed. Stat. Ann. 324; 8 Fed. Stat. Ann. (2d ed.) 212.

[Maps — post-route — rural delivery.] * * * and the Postmaster General may authorize the sale to the public of post-route maps and rural-delivery maps or blue prints at the cost of printing and ten per centum thereof added, the proceeds of such sale to be used as a further appropriation for the preparation and publication of post-route maps and rural-delivery maps or blue prints. [39 Stat. L. 422.]

[Rural mail delivery — extension of service.] * * * That rural mail delivery shall be extended so as to serve, as nearly as practicable, the entire rural population of the United States. [39 Stat. L. 423.]

[Rural mail delivery — routes — classes — letter carriers — appointment — pay — parcel post.] * * * Hereafter all rural mail delivery routes shall be divided into two classes to be known as—

Standard horse-drawn vehicle routes, which shall be twenty-four miles in length, and

Standard motor-vehicle routes, which shall be fifty miles in length, and shall only be established hereafter when a majority of the proposed patrons who are heads of families residing upon such proposed routes shall by written petition ask the Post Office Department to establish the same.

Nothing herein contained shall be construed to prohibit the establishment of horse-drawn vehicle routes of less length than the standard of twenty-four miles: *Provided*, That if, in the discretion of the Postmaster General, in order to render more complete service, it should be necessary to do so the Postmaster General is hereby authorized to increase the length of routes not to exceed fifty per centum above the standards herein prescribed, and in such cases the compensation of the carrier on such horse-drawn vehicle routes shall be increased above the maximum pay heretofore fixed by law for rural carriers at the rate of \$24 per annum for each mile of said routes in excess of thirty miles, and any major fraction of a mile shall be counted as a mile: *Provided further*, That carriers in rural mail-delivery service shall furnish and maintain at their own expense all necessary vehicle equipment for prompt handling of the mail: *And provided further*, That nothing herein shall be construed, and no order shall be issued, to prevent the use of motor vehicles on horse-drawn vehicle routes: *Provided further*, The Postmaster General in his discretion may require all carriers to furnish sufficient equipment to properly handle postal business on their routes: *And provided further*, That the Postmaster General may, in his discretion, allow and pay additional compensation to rural letter carriers who are required to carry pouch mail to intermediate post offices, or for intersecting loop routes, in all cases where it appears that the carriage of such pouches increases the expense of the equipment required by the carrier or materially increases the amount of labor performed by him, such compensation not to exceed the sum of \$12 per annum for each mile such carrier is required to carry such pouch or pouches.

The Postmaster General is hereby authorized and directed to reorganize and readjust existing rural mail delivery service where necessary to conform to the standards herein prescribed: *Provided further*, That in making appointments of rural carriers for service on new routes, which may be created by the reorganization herein ordered, preference shall be given to

carriers who were formerly employed in rural-delivery service and who were separated therefrom on or after June thirtieth, nineteen hundred and fifteen, by reason of any previous reorganization of the service and without charges against them: *And provided further*, That the Postmaster General is authorized and directed to pay, out of the appropriations already made and still available and unexpended for rural free-delivery service for the fiscal year ending June thirtieth, nineteen hundred and fifteen, to all letter carriers in the Rural Free Delivery Service during the fiscal year ending June thirtieth, nineteen hundred and fifteen, their executors or administrators, the difference between what they received for their said services and the amount that would have been paid to them in accordance with the proviso contained in joint resolution making appropriations for the service of the Post Office Department for the fiscal year ending June thirtieth, nineteen hundred and sixteen, approved March fourth, nineteen hundred and fifteen: *Provided*, That no part of the money paid under this provision shall be paid to any agent or attorney, directly or indirectly, for any alleged services in connection with this appropriation.

The Postmaster General is hereby authorized to conduct experiments in three or more communities for the purpose of determining the most practical means of extending the operations of the parcel post in the direction of promoting the marketing of farm products and furthering direct transactions between producers and consumers. Such investigation will further include the consideration of the effects on the Rural Free Delivery Service such extension of the Parcel Post System will have, and report of conclusions reached shall be made to Congress. [39 Stat. L. 423.]

SEC. 2. [Second-class mail matter — sending by freight — former Act repealed.] That so much of section one of the "Act making appropriations for the service of the Post Office Department for the fiscal year ending June thirtieth, nineteen hundred and thirteen, and for other purposes," approved August twenty-fourth, nineteen hundred and twelve, which provides that the Post Office Department shall not extend or enlarge its present policy of sending second-class matter by freight trains, is hereby repealed, but no publication shall be sent by freight if such method of transportation results in unfair discrimination: *Provided*, That whenever the owner of any publication required by an order of the Post Office Department to be transmitted by freight believes that he is unfairly discriminated against, he may apply to the Post Office Department for an opportunity to be heard; that upon such application being duly filed in writing the owner of such publication shall have opportunity for a full and fair hearing before said department, and pending final determination no change shall be made in the method of transportation of such publication as ordered by the department. The testimony in any such hearing or proceedings shall be reduced to writing and filed in the Post Office Department prior to entering an order upon such hearing. That upon such hearing if the Post Office Department decides adversely to the contention of the publisher, such publisher shall have the right, within the period of twenty days after the date of the order of the Post Office Department made upon such hearing, to appeal to the United States court of appeals of the District of Columbia, for a review of such order by said court of appeals, by filing in the court a written peti-

tion praying that the order of the Post Office Department be set aside. A copy of such petition shall be forthwith served upon the Post Office Department and thereupon the said department forthwith shall certify and file in the court a transcript of the record and testimony. Upon the filing of such transcript the court shall have jurisdiction to affirm, set aside or modify the order of the department.

The jurisdiction of the court of appeals of the District of Columbia to affirm, set aside or modify such orders of the Post Office Department shall be exclusive.

Such proceedings in the court of appeals of the District of Columbia shall be given precedence over other cases pending therein and shall be in every way expedited. [39 Stat. L. 424.]

For the provisions of the Act of Aug. 24, 1912, ch. 389, repealed by the text, see 1914 Supp. Fed. Stat. Ann. 313; 8 Fed. Stat. Ann. (2d ed.) 208.

SEC. 3. [Increased weight of mails — additional compensation.] That on account of the increased weight of mails resulting from Postmaster General's order numbered seventy-seven hundred and twenty, of December eighteenth, nineteen hundred and thirteen, respecting rates upon and limit of weight of parcel-post packages, effective from January first, nineteen hundred and fourteen, the Postmaster General is authorized to add to the compensation paid for transportation on railroad routes on and after January first, nineteen hundred and fourteen, for the remainder of the contract terms, not exceeding one per centum thereof per annum. [39 Stat. L. 425.]

SEC. 4. [Transportation of mails — additional compensation.] That on account of the increased weight of mails resulting from Postmaster General's order numbered seventy-three hundred and forty-nine, of July twenty-fifth, nineteen hundred and thirteen, respecting rates upon the limit of weight of parcel-post packages in the local, first, and second zones, and effective from August fifteenth, nineteen hundred and thirteen, the Postmaster General is authorized to add to the compensation paid for transportation on railroad routes on and after August fifteenth, nineteen hundred and thirteen, for the remainder of the contract terms, not exceeding one-half of one per centum thereof per annum. [39 Stat. L. 425.]

SEC. 5. [Transportation of mails — readjustment of compensation — equipment of railroad companies.] That the Postmaster General is authorized and directed to readjust the compensation to be paid to railroad companies from and after the thirtieth day of June, nineteen hundred and sixteen, or as soon thereafter as may be practicable, for the transportation and handling of the mails and furnishing facilities and services in connection therewith upon the conditions and at the rates hereinafter provided.

The Postmaster General may state railroad mail routes and authorize mail service thereon of the following four classes, namely: Full railway post-office car service, apartment railway post-office car service, storage-car service, and closed-pouch service.

Full railway post-office car mail service shall be service by cars forty feet or more in length, constructed, fitted up, and maintained for the distribution of mails on trains. The authorizations of full railway post-office

cars shall be for standard-sized cars sixty feet in length, inside measurement, except as hereinafter provided.

Apartment railway post-office car mail service shall be service by apartments less than forty feet in length in cars constructed, fitted up, and maintained for the distribution of mails on trains. Two standard sizes of apartment railway post-office cars may be authorized and paid for, namely, apartments fifteen feet and thirty feet in length, inside measurement, except as hereinafter provided.

Storage-car mail service shall be service by cars used for the storage and carriage of mails in transit other than by full and apartment railway post-office cars. The authorizations for storage cars shall be for cars sixty feet in length, inside measurement, except as hereinafter provided: *Provided*, That storage space in units of three feet, seven feet, fifteen feet, and thirty feet, both sides of car, may be authorized in baggage cars at not exceeding pro rata of the rates hereinafter named for sixty-foot storage cars.

Service by full and apartment railway post-office cars and storage cars shall include the carriage therein of all mail matter, equipment, and supplies for the mail service and the employees of the Postal Service or Post Office Department, as shall be directed by the Postmaster General to be so carried.

Closed-pouch mail service shall be the transportation and handling by railroad employees of mails on trains on which full or apartment railway post-office cars are not authorized, except as hereinbefore provided. The authorizations for closed-pouch service shall be for units of seven feet and three feet in length, both sides of car.

The rates of payment for the services authorized in accordance with this section shall be as follows, namely:

For full railway post-office car mail service at not exceeding 21 cents for each mile of service by a sixty-foot car.

In addition thereto he may allow not exceeding \$4.25 as a combined initial and terminal rate for each one-way trip of a sixty-foot car.

For apartment railway post-office car mail service at not exceeding 11 cents for each mile of service by a thirty-foot apartment car and 6 cents for each mile of service by a fifteen-foot apartment car.

In addition thereto he may allow not exceeding \$2.75 as a combined initial and terminal rate for each one-way trip of a thirty-foot apartment car and \$2 as a combined initial and terminal rate for each one-way trip of a fifteen-foot apartment car.

For storage-car mail service at not exceeding 21 cents for each mile of service by a sixty-foot car.

In addition thereto he may allow not exceeding \$4.25 as a combined initial and terminal rate for each one-way trip of a sixty-foot car.

Where authorizations are made for cars of the standard lengths of sixty, thirty, and fifteen feet, as provided by this section, and the railroad company is unable to furnish such cars of the length authorized, but furnishes cars of lesser length than those authorized, but which are determined by the department to be sufficient for the service, the Postmaster General may accept the same and pay only for the actual space furnished and used, the compensation to be not exceeding pro rata of that provided by this section for the standard length so authorized: *Provided*, That the Postmaster

General may accept cars and apartments of greater length than those of the standard requested, but no compensation shall be allowed for such excess lengths.

For closed-pouch service, at not exceeding $1\frac{1}{2}$ cents for each mile of service when a three-foot unit is authorized, and 3 cents for each mile of service when a seven-foot unit is authorized.

In addition thereto he may allow not exceeding 25 cents as the combined initial and terminal rate for each one-way trip of a three-foot unit of service and 50 cents as a combined initial and terminal rate for each one-way trip of a seven-foot unit of service.

Railroad companies whose railroads were constructed in whole or in part by a land grant made by Congress, on the condition that the mails should be transported over their roads at such price as Congress should by law direct, shall receive only eighty per centum of the compensation otherwise authorized by this section.

The initial and terminal rates provided for herein shall cover expenses of loading and unloading mails, switching, lighting, heating, cleaning mail cars, and all other expenses incidental to station service and required by the Postmaster General in connection with the mails that are not included in the car-mile rate. The allowance for full railway post-office cars, apartment railway post-office cars, and storage cars may be varied in accordance with the approximate difference in their respective cost of construction and maintenance.

In computing the car miles of the full railway post-office cars and apartment railway post-office cars, the maximum space authorized in either direction of a round-trip car run shall be regarded as the space to be computed in both directions, unless otherwise mutually agreed upon.

In computing the car miles of storage cars, the maximum space authorized in either direction of a round-trip car run shall be regarded as the space to be computed in both directions, unless the car be used by the company in the return movement, or otherwise mutually agreed upon.

New service and additional service may be authorized at not exceeding the rates herein provided, and service may be reduced or discontinued with pro rata reductions in pay, as the needs of the Postal Service may require: *Provided*, That no additional pay shall be allowed for additional service unless specifically authorized by the Postmaster General.

The Postmaster General is authorized to make special contracts with the railroad companies for the transportation of the mails where in his judgment the conditions warrant the application of higher rates than those herein specified, and make report to Congress of all cases where such special contracts are made and the terms and reasons therefor.

All cars or parts of cars used for the Railway Mail Service shall be of such construction, style, length, and character, and furnished in such manner as shall be required by the Postmaster General, and shall be constructed, fitted up, maintained, heated, lighted, and cleaned by and at the expense of the railroad companies. No pay shall be allowed for service by any railway post-office car which is not sound in material and construction and which is not equipped with sanitary drinking-water containers and toilet facilities, nor unless such car is regularly and thoroughly cleaned. No pay shall be allowed for service by any wooden full railway

post-office car unless constructed substantially in accordance with the most approved plans and specifications of the Post Office Department for such type of cars, nor for service by any wooden full railway post-office car run in any train between adjoining steel cars, or between the engine and a steel car adjoining. After the first of July, nineteen hundred and seventeen, the Postmaster General shall not approve or allow to be used, or pay for service by, any full railway post-office car not constructed of steel or steel underframe or equally indestructible material; and all full railway post-office cars accepted for this service and contracted for by the railroad companies hereafter shall be constructed of steel. Until July first, nineteen hundred and seventeen in cases of emergency and in cases where the necessities of the service require it, the Postmaster General may provide for service by full railway post-office cars of other than steel or steel underframe construction, and fix therefor such rate of compensation within the maximum herein provided as shall give consideration to the inferior character of construction, and the railroad companies shall furnish service by such cars at such rates so fixed.

Service over property owned or controlled by another company or a terminal company shall be considered service of the railroad company using such property and not that of the other or terminal company: *Provided*, That service over land-grant road shall be paid for as herein provided.

Railroad companies carrying the mails shall furnish all necessary facilities for caring for and handling them while in their custody. They shall furnish all cars or parts of cars used in the transportation and distribution of the mails, except as herein otherwise provided, and place them in stations before the departure of trains at such times and when required to do so. They shall provide station space and rooms for handling, storing, and transfer of mails in transit, including the separation thereof, by packages for connecting lines, and such distribution of registered mail in transit as may be necessary, and for offices for the employees of the Railway Mail Service engaged in such station work when required by the Postmaster General, in which mail from station boxes may be distributed if it does not require additional space.

If any railroad company carrying the mails shall fail or refuse to provide cars or apartments in cars for distribution purposes when required by the Postmaster General, or shall fail or refuse to construct, fit up, maintain, heat, light, and clean such cars and provide such appliances for use in case of accident as may be required by the Postmaster General, it shall be fined such reasonable sum as may, in the discretion of the Postmaster General, be deemed proper.

The Postmaster General shall in all cases decide upon what trains and in what manner the mails shall be conveyed. Every railroad company carrying the mails shall carry on any train it operates, and with due speed, all mailable matter, equipment, and supplies directed to be carried thereon. If any such railroad company shall fail or refuse to transport the mails, equipment, and supplies when required by the Postmaster General on any train or trains it operates, such company shall be fined such reasonable amount as may, in the discretion of the Postmaster General, be deemed proper.

The Postmaster General may make deductions from the pay of railroad companies carrying the mails under the provisions of this section for reduction in service or infrequency of service where, in his judgment, the importance of the facilities withdrawn or reduced requires it, and impose fines upon them for delinquencies. He may deduct the price of the value of the service in cases where it is not performed, and not exceeding three times its value if the failure be occasioned by the fault of the railroad company.

The provisions of this section shall apply to service operated by railroad companies partly by railroad and partly by steamboats.

The provision of this section respecting the rates of compensation shall not apply to mails conveyed under special arrangement in freight trains, for which rates not exceeding the usual and just freight rates may be paid, in accordance with the classifications and tariffs approved by the Interstate Commerce Commission.

Railroad companies carrying the mails shall submit, under oath, when and in such form as may be required by the Postmaster General, evidence as to the performance of service.

The Postmaster General shall, from time to time, request information from the Interstate Commerce Commission as to the revenue received by railroad companies from express companies for services rendered in the transportation of express matter, and may, in his discretion, arrange for the transportation of mail matter other than of the first class at rates not exceeding those so ascertained and reported to him, and it shall be the duty of the railroad companies to carry such mail matter at such rates fixed by the Postmaster General.

The Postmaster General is authorized, in his discretion, to petition the Interstate Commerce Commission for the determination of a postal carload or less-than-carload rate for transportation of mail matter of the fourth class and periodicals, and may provide for and authorize such transportation, when practicable, at such rates, and it shall be the duty of the railroad companies to provide and perform such service at such rates and on the conditions prescribed by the Postmaster General.

The Postmaster General may, in his discretion, distinguish between the several classes of mail matter and provide for less frequent dispatches of mail matter of the third and fourth classes and periodicals when lower rates for transportation or other economies may be secured thereby without material detriment to the service.

The Postmaster General is authorized to return to the mails, when practicable for the utilization of car space paid for and not needed for the mails, postal cards, stamped envelopes, newspaper wrappers, empty mail bags, furniture, equipment, and other supplies for the Postal Service.

The Postmaster General, in cases of emergency between October first and April first of any year, may hereafter return to the mails empty mail bags and other equipment theretofore withdrawn therefrom as required by law, and, where such return requires additional authorization of car space under the provisions of this section, to pay for the transportation thereof as provided for herein out of the appropriation for inland transportation by railroad routes.

The Postmaster General may have the weights of mail taken on railroad

mail routes, and computations of the average loads of the several classes of cars and other computations for statistical and administrative purposes made at such times as he may elect, and pay the expense thereof out of the appropriation for inland transportation by railroad routes.

Pending the decision of the Interstate Commerce Commission, as hereinafter provided for, the existing method and rates of railway mail pay shall remain in effect, except on such routes or systems as the Postmaster General shall select, and to the extent he may find it practicable and necessary to place upon the space system of pay in the manner and at the rates provided in this section, with the consent and approval of the Interstate Commerce Commission, in order to properly present to the Interstate Commerce Commission the matters hereinafter referred thereto: *Provided*, That if the final decision of the Interstate Commerce Commission shall be adverse to the space system, and if the rates established by it under whatever method or system is adopted shall be greater or less than the rates under this section, the Postmaster General shall readjust the compensation of the carriers on such selected routes and systems in accordance therewith, from the dates on which the rates named in this section became effective.

All railway common carriers are hereby required to transport such mail matter as may be offered for transportation by the United States in the manner, under the conditions, and with the service prescribed by the Postmaster General and shall be entitled to receive fair and reasonable compensation for such transportation and for the service connected therewith.

The Interstate Commerce Commission is hereby empowered and directed as soon as practicable to fix and determine from time to time the fair and reasonable rates and compensation for the transportation of such mail matter by railway common carriers and the service connected therewith, prescribing the method or methods by weight, or space, or both, or otherwise, for ascertaining such rate or compensation, and to publish the same, and orders so made and published shall continue in force until changed by the commission after due notice and hearing.

In fixing and determining the fair and reasonable rates for such service the commission shall consider the relation existing between the railroads as public service corporations and the Government, and the nature of such service as distinguished, if there be a distinction, from the ordinary transportation business of the railroads.

The procedure for the ascertainment of said rates and compensation shall be as follows:

Within three months from and after the approval of this Act, or as soon thereafter as may be practicable, the Postmaster General shall file with the commission a statement showing the transportation required of all railway common carriers, including the number, equipment, size, and construction of the cars necessary for the transaction of the business; the character and speed of the trains which are to carry the various kinds of mail; the service, both terminal and en route, which the carriers are to render; and all other information which may be material to the inquiry, but such other information may be filed at any time in the discretion of the commission.

The Postmaster General is authorized to employ such clerical and other assistance as shall be necessary to carry out the provisions of this section, and to rent quarters in Washington, District of Columbia, if necessary,

for the clerical force engaged thereon, and to pay for the same out of the appropriation for inland transportation by railroad routes. The Postmaster General shall file with the commission a comprehensive plan for the transportation of the mails on said railways and shall embody therein what he believes to be the reasonable rate or compensation the said railway carriers should receive.

Thereupon the commission shall give notice of not less than thirty days to each carrier so required to transport mail and render service, and upon a day to be fixed by the commission, not later than thirty days after the expiration of the notice herein required, each of said carriers shall make answer and the commission shall proceed with the hearing as now provided by law for other hearings between carriers and shippers or associations.

All the provisions of the law for taking testimony, securing evidence, penalties, and procedure are hereby made applicable.

For the purpose of determining and fixing rates or compensation hereunder the commission is authorized to make such classification of carriers as may be just and reasonable and, where just and equitable, fix general rates applicable to all carriers in the same classification.

Pending such hearings, and the final determination of the question, if the Interstate Commerce Commission shall determine that it is necessary or advisable, in order to carry out the provisions of this section, to have additional and more frequent weighing of the mails for statistical purposes, the Postmaster General, upon request of the commission, shall provide therefor in the manner now prescribed by law, but such weighing need not be for more than thirty days.

At the conclusion of the hearing the commission shall establish by order a fair, reasonable rate or compensation to be received, at such stated times as may be named in the order, for the transportation of mail matter and the service connected therewith, and during the continuance of the order the Postmaster General shall pay the carrier from the appropriation herein made such rate or compensation.

Either the Postmaster General or any such carrier may at any time after the lapse of six months from the entry of the order assailed apply for a reexamination, and thereupon substantially similar proceedings shall be had with respect to the rate or rates for service covered by said application, provided said carrier or carriers have an interest therein.

For the purposes of this section the Interstate Commerce Commission is hereby vested with all the powers which it is now authorized by law to exercise in the investigation and ascertainment of the justness and reasonableness of freight, passenger, and express rates to be paid by private shippers.

The Interstate Commerce Commission shall allow to railroad companies whose railroads were constructed in whole or in part by a land grant made by Congress on condition that the mails should be transported over their roads at such price as Congress should by law direct only eighty per centum of the compensation paid other railroads for transporting the mails and all service by the railroads in connection therewith.

The existing law for the determination of mail pay, except as herein modified, shall continue in effect until the Interstate Commerce Commission under the provisions hereof fixes the fair, reasonable rate or compensation for such transportation and service.

That the appropriations for inland transportation by railroad routes and for railway post-office car service for the fiscal year ending June thirtieth, nineteen hundred and seventeen, are hereby made available for the purposes of this section.

That it shall be unlawful for any railroad company to refuse to perform mail service at the rates or methods of compensation provided by law when required by the Postmaster General so to do, and for such offense shall be fined \$1,000. Each day of refusal shall constitute a separate offense. [39 Stat. L. 425.]

SEC. 6. [Fourth class mail matter — the parcel post — readjustment of classification, etc.] If the Postmaster General shall find on experience that the classification of articles mailable, as well as the weight limit, or the rates of postage, zone or zones, and other conditions of mailability, under section eight of the Act approved August twenty-fourth, nineteen hundred and twelve, or any of them, are such as to prevent the shipment of articles desirable, or to permanently render the cost of the service greater than the receipts of the revenue therefrom, he is hereby authorized to re-form from time to time such classification, weight limit, rates, zone or zones, or conditions, or either, in order to promote the service to the public or to insure the receipt of revenue from such service adequate to pay the cost thereof: *Provided, however,* That before any change is hereafter made in weight limit, rates of postage, or zone or zones, by the Postmaster General, the proposed change shall be approved by the Interstate Commerce Commission after thorough and independent consideration by that body in such manner as it may determine. [39 Stat. L. 431.]

For the Act of Aug. 24, 1912, ch. 389, § 8, mentioned in the text, see 1914 Supp. Fed. Stat. Ann. 319; 8 Fed. Stat. Ann. (2d ed.) 181.

An Act Making Appropriations for the service of the Post Office Department for the fiscal year ending June thirtieth, nineteen hundred and eighteen, and for other purposes.

[Act of March 3, 1917, ch. 162, 39 Stat. L. 1058.]

SEC. 1. [First class post offices — foremen — stenographers.] * * * That there may also be employed at any first-class post offices foremen and stenographers at a salary of \$1,300 or more per annum. [39 Stat. L. 1062.]

[Clerks — appointment — assignment.] * * * That hereafter the appointment and assignment of clerks hereunder shall be so made during each fiscal year as not to involve a greater aggregate expenditure than the sum appropriated; and to enable the Postmaster General to carry out the provisions of this Act and also the Act of March second, nineteen hundred and seven, classifying clerks and city letter carriers in first and second class post offices, he may hereafter exceed the number of clerks appropriated

for for [sic] particular grades: *Provided*, That the number of clerks in the aggregate as herein authorized be not exceeded. [39 Stat. L. 1062.]

For the provisions of the Act of March 2, 1907, ch. 2513, § 1, mentioned in the text, see 1909 Supp. Fed. Stat. Ann. 522; 8 Fed. Stat. Ann. (2d ed.) 522.

First and second class post offices — holidays — special clerks — compensatory time.] * * * That hereafter when the needs of the service require the employment on holidays of "special clerks" in first and second class post offices, they shall be allowed compensatory time on one of the thirty days next following the holiday on which they perform such service. [39 Stat. L. 1062.]

[Postal service — Sundays and holidays — employment — compensatory time.] * * * That hereafter when the needs of the Postal Service require the employment on Sundays or holidays of foremen, watchmen, messengers, and laborers they shall be granted compensatory time in the same manner as provided by law for clerks and carriers in first and second class post offices. [39 Stat. L. 1062.]

[Railway postal clerks — grades — promotions — transfers — salaries.] * * * That hereafter any substitute railway postal clerk shall, after having performed service equivalent to three hundred and thirteen days, be appointed railway postal clerk of grade one, and in computing such service credit shall be allowed for service performed prior to the approval of this Act: *Provided further*, That hereafter when railway postal clerks are transferred from one assignment to another because of changes in the service their salaries shall not be reduced by reason of such change: *Provided further*, That hereafter clerks assigned as clerks in charge of crews consisting of more than one clerk shall be clerks of grades five to ten, inclusive, and may be promoted one grade only after three years' satisfactory and faithful service in such capacity: *Provided further*, That railway postal clerks shall be credited with full time when deadheading under orders of the department, and the appointment and assignment of clerks hereunder shall be so made during the fiscal year as not to involve a greater aggregate expenditure than this sum; and, to enable the Postmaster General to reclassify the salaries of railway postal clerks and make necessary appointments and promotions, he may exceed the number of clerks in such of the grades as may be necessary: *Provided*, That the number of clerks in the aggregate as herein authorized be not exceeded. [39 Stat. L. 1065.]

[Railway postal clerks — travel allowances — former Act amended.] * * * That the Act of August twenty-fourth, nineteen hundred and twelve (Thirty-seventh Statutes, page five hundred and forty-eight), be amended to read as follows: "That hereafter, in addition to the salaries by law provided, the Postmaster General is hereby authorized to make travel allowances in lieu of actual expenses at fixed rates per annum, not exceeding in the aggregate the sum annually appropriated, to railway postal clerks, acting railway postal clerks, and substitute railway postal clerks, including substitute railway postal clerks for railway postal clerks

granted leave with pay on account of sickness, assigned to duty in railway post-office cars, while on duty, after ten hours from the time of beginning their initial run, under such regulations as he may prescribe, and in no case shall such an allowance exceed \$1.20 per day." [39 Stat. L. 1065.]

For the provisions of the Act of Aug. 24, 1912, ch. 389, § 1, amended by the text, see 1914 Supp. Fed. Stat. Ann. 313; 8 Fed. Stat. Ann. (2d ed.) 209.

[Ocean mail service — contracts — American steamships.] * * *

That hereafter the Postmaster General is hereby authorized and empowered to enter into contracts with American citizens for the carrying of the mail between the United States and Great Britain on steamships built in the United States capable of maintaining a speed of thirty knots an hour at sea in ordinary weather and of a gross registered tonnage of not less than thirty-five thousand tons, the said service to commence not more than four years after the contract shall be let. The rate of compensation to be paid for the said ocean mail service shall not exceed the sum of \$8 per mile by the shortest practicable route for each outward voyage. The Postmaster General shall have the right to reject all bids not in his opinion reasonable for the attaining of the purposes named: *Provided further*, That all of the provisions of the Act of March third, eighteen hundred and ninety-one, entitled "An Act to provide for ocean mail service between the United States and foreign ports, and to promote commerce," so far as they are not inconsistent herewith shall control and apply to the methods to be used and contracts to be made hereunder. [39 Stat. L. 1066.]

For the Act of March 3, 1891, ch. 519, mentioned in the text, see 5 Fed. Stat. Ann. 927; 8 Fed. Stat. Ann. (2d ed.) 218.

Sec. 2. [Contracts for mail transportation — by whom signed — sealing.] Contracts made in the Post Office Department for the various classes of mail transportation may, upon order of the Postmaster General, be signed in the place and stead of the Postmaster General by the Assistant Postmaster General who is charged with the supervision of the mail transportation involved, and such officer shall attest his signature to such contracts by the seal of the Post Office Department. [39 Stat. L. 1068.]

Section 3 of this Act relates to the fiscal year 1918 only and is omitted.

Sec. 4. [Distribution of supplies — auditing and accounting.] In order to promote economy in the distribution of supplies, and in auditing and accounting, the Postmaster General may hereafter designate district and central offices in such districts through which supplies shall be distributed and accounts rendered. [39 Stat. L. 1069.]

[Sec. 1.] [Distribution of supplies — auditing and accounting — designation of offices.] * * * In order to promote economy in the distribution of supplies, and in auditing and accounting, the Postmaster General may designate districts and central offices in such districts through which supplies shall be distributed and accounts audited, but in no case

shall the postmaster at the central station be given authority to abolish offices, to change officers or employees in offices included in such district. [39 Stat. L. 1110.]

This is from the Legislative, Executive and Judicial Appropriation Act of March 3, 1917, ch. 163.

[Navy mail clerks — designation of enlisted men of Navy or Marine Corps.] * * * That the provisions of the Act of May twenty-seventh, nineteen hundred and eight (Thirty-fifth Statutes, pages four hundred and seventeen and four hundred and eighteen), as amended by the Act of August twenty-fourth, nineteen hundred and twelve (Thirty-seventh Statutes, page five hundred and sixty), are hereby extended to authorize the designation of enlisted men of the Navy or Marine Corps as Navy mail clerks and assistant Navy mail clerks with expeditionary forces on shore. [39 Stat. L. 1188.]

This is from the Naval Appropriation Act of March 4, 1917, ch. 180.

For the provisions of the Act of May 27, 1908, ch. 206, § 1, mentioned in the text, see 1909 Supp. Fed. Stat. Ann. 525.

For the provisions of the amending Act of Aug. 24, 1909, ch. 389, § 11, mentioned in the text, see 1914 Supp. Fed. Stat. Ann. 322.

For said Act of May 27, 1908, ch. 206, § 1, as amended by said Act of Aug. 24, 1909, ch. 389, § 11, see 8 Fed. Stat. Ann. (2d ed.) 74.

TITLE XI.

POSTAL RATES.

SEC. 1100. [First class mail matter.] That the rate of postage on all mail matter of the first class, except postal cards, shall thirty days after the passage of this Act be, in addition to the existing rate, 1 cent for each ounce or fraction thereof: *Provided*, That the rate of postage on drop letters of the first class shall be 2 cents an ounce or fraction thereof. Postal cards, and private mailing or post cards when complying with the requirements of existing law, shall be transmitted through the mails at 1 cent each in addition to the existing rate.

That letters written and mailed by soldiers, sailors, and marines assigned to duty in a foreign country engaged in the present war may be mailed free of postage, subject to such rules and regulations as may be prescribed by the Postmaster General. [— Stat. L. —.]

The foregoing section 1100 and the following sections 1101–1109 constitute a part of "Title XI.—Postal Rates" of an Act of Oct. 3, 1917, ch. —, entitled "An Act To provide revenue to defray war expenses, and for other purposes." For a reference to the entire Act see the notes to section 1000 thereof, given in INTERNAL REVENUE, *ante*, p. 382. Sections 1300 and 1302, given in INTERNAL REVENUE, *ante*, p. 386, respectively provide that the invalidity of any part of the Act shall not affect the validity of the remainder, and that unless otherwise specified the Act shall become effective on the day following its passage.

For section 1110 of this Act, see INTOXICATING LIQUORS, *ante*, p. 394.

SEC. 1101. [Second class matter.] That on and after July first, nineteen hundred and eighteen, the rates of postage on publications entered as

second-class matter (including sample copies to the extent of ten per centum of the weight of copies mailed to subscribers during the calendar year) when sent by the publisher thereof from the post office of publication or other post office, or when sent by a news agent to actual subscribers thereto, or to other news agents for the purpose of sale:

(a) In the case of the portion of such publication devoted to matter other than advertisements, shall be as follows: (1) On and after July first, nineteen hundred and eighteen, and until July first, nineteen hundred and nineteen, $1\frac{1}{4}$ cents per pound or fraction thereof; (2) on and after July first, nineteen hundred and nineteen, $1\frac{1}{2}$ cents per pound or fraction thereof.

(b) In the case of the portion of such publication devoted to advertisements the rates per pound or fraction thereof for delivery within the several zones applicable to fourth-class matter shall be as follows (but where the space devoted to advertisements does not exceed five per centum of the total space, the rate of postage shall be the same as if the whole of such publication was devoted to matter other than advertisements): (1) On and after July first, nineteen hundred and eighteen, and until July first, nineteen hundred and nineteen, for the first and second zones, $1\frac{1}{4}$ cents; for the third zone, $1\frac{1}{2}$ cents; for the fourth zone, 2 cents; for the fifth zone, $2\frac{1}{4}$ cents; for the sixth zone, $2\frac{1}{2}$ cents; for the seventh zone, 3 cents; for the eighth zone, $3\frac{1}{4}$ cents; (2) on and after July first, nineteen hundred and nineteen, and until July first, nineteen hundred and twenty, for the first and second zones, $1\frac{1}{2}$ cents; for the third zone, 2 cents; for the fourth zone, 3 cents; for the fifth zone, $3\frac{1}{2}$ cents; for the sixth zone, 4 cents; for the seventh zone, 5 cents; for the eighth zone, $5\frac{1}{2}$ cents; (3) on and after July first, nineteen hundred and twenty, and until July first, nineteen hundred and twenty-one, for the first and second zones, $1\frac{3}{4}$ cents; for the third zone, $2\frac{1}{2}$ cents; for the fourth zone, 4 cents; for the fifth zone, $4\frac{3}{4}$ cents; for the sixth zone, $5\frac{1}{2}$ cents; for the seventh zone, 7 cents; for the eighth zone, $7\frac{3}{4}$ cents; (4) on and after July first, nineteen hundred and twenty-one, for the first and second zones, 2 cents; for the third zone, 3 cents; for the fourth zone, 5 cents; for the fifth zone, 6 cents; for the sixth zone, 7 cents; for the seventh zone, 9 cents; for the eighth zone, 10 cents;

(c) With the first mailing of each issue of each such publication, the publisher shall file with the postmaster a copy of such issue, together with a statement containing such information as the Postmaster General may prescribe for determining the postage chargeable thereon. [— *Stat L.* —.]

See the note to the preceding section 1100 of this Act.

SEC. 1102. [Daily newspapers — second class mail matter — zones.] That the rate of postage on daily newspapers, when the same are deposited in a letter-carrier office for delivery by its carriers, shall be the same as now provided by law; and nothing in this title shall affect existing law as to free circulation and existing rates on second-class mail matter within the county of publication: *Provided*, That the Postmaster General may hereafter require publishers to separate or make up to zones in such a manner as he may direct all mail matter of the second class when offered for mailing. [— *Stat. L.* —.]

See the note to section 1100 of this Act, *supra*, p. 658.

SEC. 1103. [Newspapers and periodicals of religious, educational, etc. nature.] That in the case of newspapers and periodicals entitled to be entered as second-class matter and maintained by and in the interest of religious, educational, scientific, philanthropic, agricultural, labor, or fraternal organizations or associations, not organized for profit and none of the net income of which inures to the benefit of any private stockholder or individual, the second-class postage rates shall be, irrespective of the zone, in which delivered (except when the same are deposited in a letter carrier office for delivery by its carriers, in which case the rates shall be the same as now provided by law), $1\frac{1}{8}$ cents a pound or fraction thereof on and after July first, nineteen hundred and eighteen, and until July first, nineteen hundred and nineteen, and on and after July first, nineteen hundred and nineteen, $1\frac{1}{4}$ cents a pound or fraction thereof. The publishers of such newspapers or periodicals before being entitled to the foregoing rates shall furnish to the Postmaster General, at such times and under such conditions as he may prescribe, satisfactory evidence that none of the net income of such organization inures to the benefit of any private stockholder or individual. [— *Stat. L.* —.]

See the note to section 1100 of this Act, *supra*, p. 658.

SEC. 1104. [Total weight of edition not in excess of one pound.] That where the total weight of any one edition or issue of any publication mailed to any one zone does not exceed one pound, the rate of postage shall be 1 cent. [— *Stat. L.* —.]

See the note to section 1100 of this Act, *supra*, p. 658.

SEC. 1105. [Zone rates — entire bulk mailed.] The zone rates provided by this title shall relate to the entire bulk mailed to any one zone and not to individually addressed packages. [— *Stat. L.* —.]

See the note to section 1100 of this Act, *supra*, p. 658.

SEC. 1106. [Newspaper or periodical mailed by other than publisher, etc.] That where a newspaper or periodical is mailed by other than the publisher or his agent or a news agent or dealer, the rate shall be the same as now provided by law. [— *Stat. L.* —.]

See the note to section 1100 of this Act, *supra*, p. 658.

SEC. 1107. [Payments by Postmaster General.] That the Postmaster General, on or before the tenth day of each month, shall pay into the general fund of the Treasury an amount equal to the difference between the estimated amount received during the preceding month for the transportation of first class matter through the mails and the estimated amount which would have been received under the provisions of the law in force at the time of the passage of this Act. [— *Stat. L.* —.]

See the note to section 1100 of this Act, *supra*, p. 658.

SEC. 1108. [Salaries of postmasters.] That the salaries of postmasters at offices of the first, second, and third classes shall not be increased after

July first, nineteen hundred and seventeen, during the existence of the present war. The compensation of postmasters at offices of the fourth class shall continue to be computed on the basis of the present rates of postage. [— *Stat. L.* —.]

See the note to section 1100 of this Act, *supra*, p. 658.

SEC. 1109. [Postmasters on leave for military purposes — clerk hire.] That where postmasters at offices of the third class have been since May first, nineteen hundred and seventeen, or hereafter are granted leave without pay for military purposes, the Postmaster General may allow, in addition to the maximum amounts which may now be allowed such officers for clerk hire, in accordance with law, an amount not to exceed fifty per centum of the salary of the postmaster. [— *Stat. L.* —.]

See the note to section 1100 of this Act, *supra*, p. 658.

For section 1110 of this Act, see *INTOXICATING LIQUORS*, *ante*, p. 304.

[SEC. 1.] [Mail matter relating to naturalization — free postage — penalty for abuse of privilege.] * * * That all mail matter, of whatever class, relating to naturalization, including duplicate papers required by law or regulation to be sent to the Bureau of Naturalization by clerks of State or Federal courts, addressed to the Department of Labor, or the Bureau of Naturalization, or to any official thereof, and indorsed "Official Business," shall be transmitted free of postage, and by registered mail if necessary, and so marked: *Provided further*, That if any person shall make use of such indorsement to avoid payment of postage or registry fee on his or her private letter, package, or other matter in the mail, the person so offending shall be guilty of a misdemeanor and subject to a fine of \$300, to be prosecuted in any court of competent jurisdiction. [— *Stat. L.* —.]

This is from the Deficiencies Appropriations Act of Oct. 6, 1917, ch. —.

An Act Authorizing postage rates on aeroplane mail.

[*Act of May 10, 1918, ch. —, — Stat. L.* —.]

[Postage — aeroplane mail.] That the Postmaster General, in his discretion, may require the payment of postage on mail carried by aeroplane at not exceeding 24 cents per ounce or fraction thereof.

[Enlisted men of Navy or Marine Corps as mail clerks.] * * * That the provisions of the Act of May twenty-seventh, nineteen hundred and eight (Thirty-fifth Statutes, pages four hundred and seventeen and four hundred and eighteen), as amended by the Act of August twenty-fourth, nineteen hundred and twelve (Thirty-seventh Statutes, page five hundred and sixty), and as amended by the Act of March fourth, nineteen hundred

and seventeen (Thirty-ninth Statutes, page eleven hundred and eighty-eight), are hereby extended to authorize the designation of enlisted men of the Navy or Marine Corps as Navy mail clerks and assistant Navy mail clerks for duty at stations and shore establishments under the jurisdiction of the Navy Department where the services of such mail clerks and assistant mail clerks are necessary. [— *Stat. L.* —.]

This is from the Naval Appropriation Act of July 1, 1918, ch. —.

For Act of May 27, 1908, ch. 206, § 1, as amended by Act of Aug. 24, 1912, ch. 389, § 11, see 1914 Supp. Fed. Stat. Ann. 322; 8 Fed. Stat. Ann. (2d ed.) 74.

For Act of March 4, 1917, ch. 180, see *supra*, p. 658.

An Act Making appropriations for the service of the Post Office Department for the fiscal year ending June thirtieth, nineteen hundred and nineteen, and for other purposes.

[*Act of July 2, 1918, ch. —, — Stat. L. —.*]

[SEC. 1.] [Inspectors — per diem allowances.] * * * For per diem allowance of inspectors in the field while actually traveling on official business away from their homes, their official domiciles, and their headquarters, at a rate to be fixed by the Postmaster General, not to exceed \$4 per day: *Provided*, That the Postmaster General may, in his discretion, allow inspectors per diem while temporarily located at any place on business away from their homes or their designated domiciles for a period not exceeding twenty consecutive days at any one place, and make rules and regulations governing the foregoing provisions relating to per diem: *And provided further*, That no per diem shall be paid to inspectors receiving annual salaries of \$2,000 or more, except the thirty-two inspectors receiving \$2,100 each. [— *Stat. L.* —.]

[Sunday or holiday service — compensation.] * * * That hereafter when any employee in the Postal Service under the law is entitled to compensatory time for Sunday or holiday service, if he so elects, he may be paid for overtime in lieu thereof. [— *Stat. L.* —.]

[Allowances to post offices — amount as governed by postmaster's salary.] That hereafter no allowance in excess of \$300 shall be made where the salary of the postmaster is \$1,000, \$1,100, or \$1,200; nor in excess of \$400 where the salary of the postmaster is \$1,300, \$1,400, or \$1,500; and that no allowance in excess of \$500 shall be made where the salary of the postmaster is \$1,600 or \$1,700; nor in excess of \$800 where the salary of the postmaster is \$1,800 or \$1,900. [— *Stat. L.* —.]

[Rent for post-office quarters — appropriation available.] * * * That hereafter the Postmaster General may, in the disbursement of the appropriation for such purposes, apply a part thereof to the purpose of leasing premises for the use of post offices of the first, second, and third classes at a reasonable annual rental, to be paid quarterly for a term not exceeding ten years; and that there shall not be allowed for the use of any

third-class post office for rent a sum in excess of \$500, nor more than \$100 for fuel and light, in any one year. [— *Stat. L.* —.]

[Transportation of mail — carrying by freight or express.] * * *
That hereafter, when there is no competition on a route and the rate of compensation asked is excessive, or no proposal is received, the Postmaster General may require that the mails be carried as freight or express, and it shall be unlawful for any common carrier by water to refuse to carry the mails when so required, and the penalty for such offense shall be a fine of \$500. Each day of refusal shall constitute a separate offense. [— *Stat. L.* —.]

[Transportation of mail — electric and cable cars — rate.] * * *
For inland transportation of mail by electric and cable cars, * * * *Provided*, That the rate of compensation to be paid per mile shall not exceed the rate now paid to companies performing such service, except that the Postmaster General, in cases where the quantity of mail is large and the number of exchange points numerous, may, in his discretion, authorize payment for closed-pouch service at a rate per mile not to exceed one-third above the rate per mile now paid for closed-pouch service, and for mail cars and apartments carrying the mails not to exceed the rate of 1 cent per linear foot per car-mile of travel: *Provided further*, That the rates for electric car service on routes over twenty miles in length outside of cities shall not exceed the rates paid for service on steam railroads: *Provided, however*, That not to exceed \$25,000 of the sum hereby appropriated may be expended in the discretion of the Postmaster General, where unusual conditions exist or where such service will be more expeditious and efficient and at no greater cost than otherwise, and not to exceed \$100,000 of this appropriation may be expended for regulation screen or motor screen wagon service which may be authorized in lieu of electric or cable car service: *Provided further*, That the Interstate Commerce Commission is hereby empowered and directed as soon as practicable to fix and determine from time to time the fair and reasonable rates and compensation for the transportation of mail matter by urban and interurban electric railway common carriers and the service connected therewith, prescribing the method or methods by weight or space, or both, or otherwise, for ascertaining such rate or compensation and to publish same, and orders so made and published shall continue in force until changed by the commission after due notice and hearing: *And provided further*, That it shall be unlawful for any urban or interurban electric railroad to refuse to perform mail service at the rates or methods of compensation thus provided for such service when required by the Postmaster General so to do, and for such offense shall be fined \$100. Each day of refusal shall constitute a separate offense. [— *Stat. L.* —.]

[Rural delivery service — pay of carriers.] * * * That on and after July first, nineteen hundred and eighteen, rural carriers assigned to horse-drawn vehicle routes on which daily service is performed shall receive \$24 per mile per annum for each mile said routes are in excess of twenty-four miles or major fraction thereof, based on actual mileage, and rural carriers

assigned to horse-drawn vehicle routes on which triweekly service is performed shall receive \$12 per mile per annum for each mile said routes are in excess of twenty-four miles or major fraction thereof based on actual mileage: *Provided further*, That the pay of carriers who furnish and maintain their own motor vehicles and who serve routes not less than fifty miles in length may be fixed at not exceeding \$2,160 per annum. [— *Stat. L.* —.]

SEC. 2. [Pay of post office employees — postal clerks.] That during the fiscal year ending June thirtieth, nineteen hundred and nineteen, the annual salaries fixed by law for assistant postmasters at first and second class post offices, and supervisory officials, whose compensation is \$2,200 and less per annum, shall be increased \$200, and those whose compensation is in excess of \$2,200 shall be increased five per centum; that clerks in first and second class post offices and letter carriers in the City Delivery Service shall be divided into six grades, as follows: First grade, salary \$1,000; second grade, salary \$1,100; third grade, salary \$1,200; fourth grade, salary \$1,300; fifth grade, salary \$1,400; sixth grade, salary \$1,500. Clerks and carriers shall be promoted successively to the sixth grade: *Provided*, That on July first, nineteen hundred and eighteen, clerks in first and second class post offices and letter carriers in the City Delivery Service who are in grades two, three, four, five, and six, under the Act of March second, nineteen hundred and seven, as amended, shall pass automatically from such grades and the salaries they receive thereunder to the new grades, one, two, three, four, and five, respectively, with the salaries provided for such grades in this Act: *Provided further*, That the salaries of railway postal clerks shall be graded as follows: Grade one at \$1,100; grade two at \$1,200; grade three at \$1,300; grade four at \$1,400; grade five at \$1,500; grade six at \$1,600; grade seven at \$1,700; grade eight at \$1,800; grade nine at \$1,900; grade ten at \$2,000.

The Postmaster General shall classify and fix the salaries of railway postal clerks, under such regulations as he may prescribe, in the grades provided by law; and for the purpose of organization and establishing maximum grades to which promotions may be made successively, as hereinafter provided, he shall classify railway post offices, terminal railway post offices, and transfer offices with reference to their character and importance in three classes, with salary grades as follows:

Class A, \$1,100 to \$1,400; class B, \$1,100 to \$1,500; and Class C, \$1,100 to \$1,700. He may assign to the offices of division superintendents and chief clerks such railway postal clerks as may be necessary, and fix their salaries within the grades provided by law without regard to the classification of railway post offices: *Provided*, That on July first, nineteen hundred and eighteen, railway postal clerks shall pass automatically from the grades they are in and the salaries they receive under the Act of August twenty-fourth, nineteen hundred and twelve, to the corresponding grade, with salaries provided for in this Act: *Provided*, That the classifications and increases of salaries provided for in this section shall not be continued beyond the fiscal year ending June thirtieth, nineteen hundred and nineteen: *Provided further*, That the salary of clerks, carriers, and railway postal clerks shall be increased during the fiscal year nineteen hundred

and nineteen, not more than \$200: *Provided further*, That the classifications herein provided for shall not become effective until July first, nineteen hundred and eighteen: *Provided further*, That the salaries of such other employees fixed by law or paid from lump-sum appropriations provided for in this Act, including laborers in the Railway Mail Service, who receive \$800 per annum or less shall be increased twenty per centum per annum; those who receive in excess of \$800 and not more than \$1,500 shall be increased fifteen per centum per annum; and those who receive in excess of \$1,500 and not more than \$2,200 shall be increased ten per centum per annum. Rural carriers assigned to horse-drawn vehicle routes now receiving a compensation of \$1,200 or less per annum, exclusive of mileage allowance for miles on routes over twenty-four miles in length, shall receive, in addition thereto, twenty per centum of the amount of such compensation. Such increases shall not apply to the special assistant to the Attorney General appropriated for in this Act and to postmasters at offices of the first, second, and third classes: *Provided further*, That postmasters of the fourth class shall receive the same compensation as now provided by law, except that they shall receive one hundred per centum of the cancellations of the first \$80 or less per quarter: *Provided further*, That, if the compensation does not exceed \$50 for any one quarter, fourth-class postmasters shall be allowed an increase of twenty per centum of the compensation allowed under existing law: *Provided further*, That no office shall be advanced to third-class by reason of the temporary increases herein provided: *Provided further*, That hereafter substitute, temporary, or auxiliary clerks and letter carriers at first and second-class post offices shall be paid at the rate of 40 cents an hour: *Provided further*, That the provisions of this section shall not apply to employees who receive a part of their pay from any outside sources under cooperative arrangement with the Post Office Department, or to employees who serve voluntarily or receive only a nominal compensation: *And provided further*, That the increased compensation, at the rate of five per centum and ten per centum for the fiscal year ending June thirtieth, nineteen hundred and eighteen, shall not be computed as salary in construing this section. So much as may be necessary for the increases provided for in this Act is hereby appropriated. [— *Stat. L.* —.]

For Act of March 2, 1907, ch. 2513, see 8 Fed. Stat. Ann. (2d ed.) 71.

For Act of Aug. 24, 1912, ch. 389, § 7, see 1914 Supp. Fed. Stat. Ann. 318, 8 Fed. Stat. Ann. (2d ed.) 209.

SEC. 3. [Watchmen, messengers and laborers — postal clerks — hours of labor — Sundays and holidays.] That hereafter watchmen, messengers, and laborers in first and second class post offices, and railway postal clerks assigned to terminal railway post offices and transfer offices, shall be required to work not more than eight hours a day, and that the eight hours of service shall not extend over a longer period than ten consecutive hours, and that in cases of emergency or if the needs of the service require they may be required to work in excess of eight hours a day, and for such additional services they shall be paid in proportion to their salaries as fixed by law: *Provided*, That hereafter when the needs of the Postal Service require the employment on Sundays and holidays of railway postal clerks

assigned to terminal railway post offices and transfer offices, they shall be granted compensatory time in the same manner as provided by law for clerks and carriers in first and second class offices. [— *Stat. L.* —.]

Sections 4 and 5 of this Act are omitted because they are of no general value.

SEC. 6. [Surety against losses — United States liberty loan bonds.] The Postmaster General may, under such rules and regulations as he shall prescribe, accept United States liberty loan bonds in lieu of either corporate or personal surety from contractors, officers, and employees of the Postal Service to indemnify the Government against losses resulting from the failure of any contractor, officer, or employee of the Postal Service to properly discharge his official duty. [— *Stat. L.* —.]

SEC. 7. [Transportation of food products — motor vehicle truck routes.] That to promote the conservation of food products and to facilitate the collection and delivery thereof from producer to consumer, and the delivery of articles necessary in the production of such food products to the producers, the Postmaster General is hereby authorized to conduct experiments in the operation of motor-vehicle truck routes in the vicinity of such cities of the United States as he may select, and under such rules and regulations as he may prescribe, and the cost of such experiments, not exceeding \$300,000, may be paid by the Postmaster General out of any unexpended appropriations of the Postal Service, and the Postmaster General shall report the result of such experiments to the Congress at the earliest practicable date. [— *Stat. L.* —.]

SEC. 8. [Transportation of mails — aeroplanes and automobiles.] That the Secretary of War may, in his discretion, deliver and turn over to the Postmaster General from time to time, and without charge therefor, for use in the Postal Service, such aeroplanes and automobiles or parts thereof as may prove to be, or as shall become, unsuitable for the purposes of the War Department but suitable for the use of the Postal Service; and the Postmaster General is hereby authorized to use the same, in his discretion, in the transportation of the mails and to pay the necessary expenses thereof out of the appropriation for inland transportation by steamboat or other power boat or by aeroplanes or star route. [— *Stat. L.* —.]

SEC. 9. [Employees in military or naval service — reemployment on discharge from service.] Employees, including substitute employees, of the Postal Service who have entered the military or naval service of the United States or who shall hereafter enter it during the existence of the present war, shall, when honorably discharged from such service, be reassigned to their duties in the Postal Service at the salary to which they would have been automatically promoted had they remained in the Postal Service, provided they are physically and mentally qualified to perform the duties of such positions. [— *Stat. L.* —.]

Section 10 is omitted as it concerns merely the adjustment of certain claims and has no general provision.

For section 11, see WAR DEPARTMENT AND MILITARY ESTABLISHMENT.

SEC. 12. [Postal savings depository — balance to credit of any one person — non-interest paying deposits.] That hereafter the balance to the credit of any one person in a postal-savings depository, exclusive of accumulated interest, shall not exceed \$2,500. Non-interest paying deposits shall not be accepted. All laws inconsistent herewith are hereby repealed. [— *Stat. L.* —.]

SEC. 13. [Postal savings depositories — restriction of deposits — cards for small amounts — savings stamps.] That section six of the Act approved June twenty-fifth, nineteen hundred and ten, is hereby further amended so that the proviso in said section shall read as follows:

“ Provided, That in order that smaller amounts may be accumulated for deposit, any person may purchase for 10 cents, from any postal-savings depository, specially prepared adhesive stamps to be known as ‘ postal-savings stamps,’ and attach them to a card which shall be furnished for the purpose. A card with ten postal-savings stamps affixed shall be accepted as a deposit of \$1 either in opening an account or in adding to an existing account, or may be redeemed in cash. [— *Stat L.* —.]

For Act of June 25, 1910, ch. 243, § 6, see 1912 Supp. Fed. Stat. Ann. 295; 8 Fed. Stat. Ann. (2d ed.) 243.

[SEC. 1.] [Assignment of employees by Postmaster General.] * * *
The Postmaster General shall assign to the several bureaus, offices, and divisions of the Post Office Department such number of the employees herein authorized as may be necessary to perform the work required therein; and he shall submit a statement showing such assignments and the number employed at the various salaries in the annual Book of Estimates following the estimate for salaries in the Post Office Department.

This is from the Legislative, Executive and Judicial Appropriation Act of July 3, 1918, ch. —.

PRESIDENT

Act of Feb. 14, 1917, ch. —, 667.

Threats against President — Punishment, 667.

An Act To punish persons who make threats against the President of the United States.

[Act of Feb. 14, 1917, ch. —, — Stat. L. —.]

[Threats against President — punishment.] That any person who knowingly and willfully deposits or causes to be deposited for conveyance in the mail or for delivery from any post office or by any letter carrier any letter, paper, writing, print, missive, or document containing any threat to take the life of or to inflict bodily harm upon the President of the United States,

or who knowingly and wilfully otherwise makes any such threat against the President, shall upon conviction be fined not exceeding \$1,000 or imprisoned not exceeding five years, or both. [— *Stat. L.* —.]

Sufficiency of indictments.—In *Clark v. U. S.*, 250 Fed. 449, plaintiff in error was convicted under this Act for the use of the following language, alleged by the indictment to have been with reference to the President: "Wilson is a wooden-headed son of a bitch. I wish Wilson was in hell, and if I had the power I would put him there." It was held that a motion to quash the indictment was properly overruled by the court below.

In *U. S. v. French*, 243 Fed. 785, an indictment under this Act set out letters passing from the defendant to another person as follows: "Dear Sir: if the german people can pay \$20,000.00 for Wilson [the President of the United States] wholesale fires, or soldier poisoning answer yes by cutting or having 6 of the Spanish banuts off at roots, I mean the ones on front of lot close to corner of gate way. A pro-Jerman Anarcist." And also the following: "I have an invention that will destroy an entire fleet, Navy without a noise or shot, I can burn cities

and poison thousands. I am not crazy or a faker but can produce the goods lets get together." It was held that these letters did not separately or taken together contain a threat to take the life of the President, or to do him bodily harm, and that a demurrer to the indictment should be sustained.

In *U. S. v. Stickrath*, 242 Fed. 151, the indictment charged that the defendant on a certain date "did unlawfully, knowingly, and wilfully make a threat against the President of the United States, to wit, a threat to take the life of or to inflict bodily harm upon the said President of the United States, said threat being then and there uttered and spoken by the said Pemberton W. Stickrath in words and substance as follows, to wit: 'President Wilson ought to be killed. It is a wonder some one has not done it already. If I had an opportunity, I would do it myself'—contrary to the form of the statute," etc. It was held in demurrer that the indictment was sufficient.

PRISONS AND PRISONERS

Act of July 10, 1918, ch. —, 668.

Sec. 1. United States Penitentiary, Atlanta, Georgia — Manufacture of Supplies for Use of Government — Establishment of Factories, 668.

- 2. Sale of Manufactured Articles — Disposition of Proceeds, 669.*
- 3. Payment to Inmates or Dependents of Pecuniary Earnings, 669.*
- 4. Appropriation for Purchase of Machinery and Other Equipment, 669.*
- 5. Working Capital — Creation of Fund, 669.*
- 6. Report to Congress, 670.*
- 7. Working Capital — Disbursement, 670.*
- 8. Products of Industries — Limitation on Disposition, 670.*
- 9. Repeal of Inconsistent Laws, 670.*

An Act To equip the United States Penitentiary, Atlanta, Georgia, for the manufacture of supplies for the use of the Government, for the compensation of prisoners for their labor, and for other purposes.

[*Act of July 10, 1918, ch. —, — Stat. L. —.*]

[**SEC. 1.**] [**United States Penitentiary, Atlanta, Georgia — manufacture of supplies for use of government — establishment of factories.**] That the Attorney General of the United States is authorized and directed to establish, equip, maintain, and operate at the United States Penitentiary, Atlanta, Georgia, a factory or factories for the manufacture of cotton

fabrics to supply the requirements of the War and Navy Departments, the Shipping Corporation, cotton duck suitable for tents and other army purposes and canvas for mail sacks and for the manufacture of mail sacks and other similar mail-carrying equipment for the use of the United States Government. The factory or factories shall not be so operated as to abolish any existing Government workshop or curtail the production within its present limits of any such Government workshop, and the articles so manufactured shall be sold only to the Government of the United States.

The Attorney General is hereby further authorized and directed to acquire by purchase or condemnation proceedings such tracts of land at such points as he may determine, at a total cost of not to exceed \$200,000, which may be cleared, graded, and cultivated. And the Attorney General is authorized to employ the inmates of the institution herein mentioned under such regulations as he may prescribe in the work of clearing, grading, and cultivation of such acquired tracts of land. The products of any such agricultural development, including live stock, shall be utilized in said penitentiary or be sold to the Government of the United States for the use of the military and naval forces of the United States. [— *Stat. L.*—.]

SEC. 2. [Sale of manufactured articles — disposition of proceeds.] That articles so manufactured shall be sold at the current market prices as determined by the Attorney General or his authorized agent, and all moneys or reimbursements received from such sales shall be deposited to the credit of the working capital fund created by this Act. [— *Stat. L.* —.]

SEC. 3. [Payment to inmates or dependents of pecuniary earnings.] That the Attorney General is hereby authorized and empowered to provide for the payment to the inmates or dependents upon inmates of said penitentiary such pecuniary earnings as he may deem proper, under such rules and regulations as he may prescribe. Such earnings shall be paid out of the working capital fund. [— *Stat. L.* —.]

SEC. 4. [Appropriation for purchase of machinery and other equipment.] That there is authorized to be appropriated the sum of \$650,000 for the purchase of machinery and other equipment to carry out the purposes of this Act. [— *Stat. L.* —.]

SEC. 5. [Working capital — creation of fund.] That there is created a fund, to be known as the working capital, which shall be available for the carrying on the industrial enterprise authorized herein or which may be authorized hereafter by law to be carried on in said penitentiary. The working capital shall consist of the sum of \$150,000, which sum is authorized to be appropriated. The receipts from the sale of the products or by-products of the said industries and the sale of condemned machinery or equipment shall be credited to the working capital fund and be available for appropriation by Congress, annually, for the purposes set forth in this Act. [— *Stat. L.* —.]

SEC. 6. [Report to Congress.] That at the opening of each regular session of Congress the Attorney General shall make a detailed report to Congress of the receipts and expenditures made hereunder, the quantity of material of different kinds bought or otherwise acquired and used, the number of persons employed, the hours of labor and the wages paid, the amount and kind of goods manufactured, and the prices paid therefor; also the agricultural products grown or produced on land owned or cultivated by or under the direction of the Attorney General or by the authorities of said penitentiary, the amount used therein, the amount sold, the prices, and total amount received therefor. [— *Stat. L.* —.]

SEC. 7. [Working capital — disbursement.] That said working capital shall be disbursed under the direction of the Attorney General and shall be available for the purchase, repair, or replacement of machinery or equipment, for the purchase of raw materials or parts, for the employment of necessary civilian officers and employees at the penitentiary and in Washington, for the repair and maintenance of buildings and equipment, and for all other necessary expenses in carrying out the provisions of this Act. [— *Stat. L.* —.]

SEC. 8. [Products of industries — limitation on disposition.] That the products of said industries shall not be disposed of except as provided in this Act. [— *Stat. L.* —.]

SEC. 9. [Repeal of inconsistent laws.] That all laws and parts of laws to the extent that they are in conflict with this Act are repealed. [— *Stat. L.* —.]

PRIVATE LAND CLAIMS (COURT OF)

Act of July 3, 1916, ch. 216, 670.

Filing Claims — Extension of Time — Former Act Amended, 670.

An Act To amend an Act entitled “An Act to establish a Court of Private Land Claims and to provide for the settlement of private land claims in certain States and Territories,” approved March third, eighteen hundred and ninety-one, and the Acts amendatory thereto, approved February twenty-first, eighteen hundred and ninety-three, June twenty-seventh, eighteen hundred and ninety-eight, and February twenty-sixth, nineteen hundred and nine.

[*Act of July 3, 1916, ch. 216, 39 Stat. L. 342.*]

[Filing claims — extension of time — former Act amended.] That section eighteen of an Act entitled “An Act to establish a Court of Private Land Claims and to provide for the settlement of private land claims in certain States and Territories,” approved March third, eighteen hundred and ninety-one, as amended by the Act approved February twenty-first,

eighteen hundred and ninety-three, and by the Act approved June twenty-seventh, eighteen hundred and ninety-eight, and by the Act approved February twenty-sixth, nineteen hundred and nine, be, and the same is hereby amended by striking out the words "before the fourth day of March, nineteen hundred and ten," and inserting in lieu thereof the words "before the fourth day of March, nineteen hundred and seventeen," so that the first clause of said section shall read as follows, namely:

"That all claims arising under either of the two next preceding sections of this Act shall be filed with the surveyor general of the proper State or Territory before the fourth day of March, nineteen hundred and seventeen, and no claim not so filed shall be valid."

Provided, That the extension herein granted shall not apply to lands within the limits of a confirmed grant or embraced in any entry completed under the public land laws prior to filing of a claim hereunder, nor shall its provision extend to persons holding under assignments made after March third, nineteen hundred and one. [39 Stat. L. 342.]

For the Act of March 3, 1891, ch. 539, § 18, as amended by the Act of Feb. 21, 1893, ch. 149, and June 27, 1898, ch. 504, amended by this Act, see 6 Fed. Stat. Ann. 64.

For the Act of Feb. 26, 1909, ch. 212, mentioned in this Act, see 1909 Supp. Fed. Stat. Ann. 530.

For a reference to the Act establishing the Court of Private Land Claims mentioned in the text, and the various Acts amendatory thereof, see the note to R. S. sec. 453, given in PUBLIC LANDS, 8 Fed. Stat. Ann. (2d ed.) 491.

PUBLIC CONTRACTS

Act of June 15, 1917, ch. —, 670.

Sec. 1. Contracts to Be in Writing — R. S. Sec. 3744 Amended, 671.

Act of Oct. 6, 1917, ch. —, 671.

Sec. 5. Contracts Relating to Army and Navy Supplies — Advance Payments, 671.

[SEC. 1.] [Contracts to be in writing — R. S. sec. 3744 amended.] * * *

Section thirty-seven hundred and forty-four, Revised Statutes, is hereby amended by adding the following at the end of the last sentence: "*Provided*, That the Secretary of War or the Secretary of the Navy may extend the time for filing such contracts in the returns office of the Department of the Interior to ninety days whenever in their opinion it would be to the interest of the United States to follow such a course." [— Stat. L. —.]

This is from the Deficiencies Appropriation Act of June 15, 1917, ch. —.

For R. S. sec. 3744, amended by the text, see 6 Fed. Stat. Ann. 132; 8 Fed. Stat. Ann. (2d ed.) 361.

SEC. 5. [Contracts relating to army and navy supplies — advance payments.] That the Secretary of War and the Secretary of the Navy are authorized, during the period of the existing emergency, from appropriations available therefor to advance payments to contractors for supplies for

their respective departments in amounts not exceeding thirty per centum of the contract price of such supplies: *Provided*, That such advances shall be made upon such terms as the Secretary of War and the Secretary of the Navy, respectively, shall prescribe and they shall require adequate security for the protection of the Government for the payments so made. [*— Stat. L. —.*]

This is from the Deficiencies Appropriation Act of Oct. 6, 1917, ch. —.

PUBLIC DEBT

Act of March 3, 1917, ch. 159, 673.

Sec. 400. Bonds — Issue for Specially Designated Expenditures — Character — Redemption, 673.

401. Loans — Certificates of Indebtedness — Counterfeiting — Former Act Amended, 674.

Res. of March 4, 1917, ch. 191, 674.

Bonds for Naval Expenditures — Character, 674.

Act of April 24, 1917, ch. — ("First Liberty Bond Act"), 675.

Sec. 1. Bond Issue for National Security and Defense — Amount — Form — Sale, 675.

2. Establishment of Credits for Foreign Governments — Foreign Bonds — Purchase, 676.

3. Obligations of Foreign Governments — Sale, 676.

4. Issuance of Bonds under Former Statute — Borrowing on Credit of United States, 676.

5. Rate of Interest of Bonds — Higher Rate When Allowed, 677.

6. Certificates of Indebtedness, 677.

7. Proceeds of Bonds and Certificates — Where Deposited, 678.

8. Expenses Arising under Act — How Met — Report, 678.

9. Title of Act, 679.

Act of Sept. 24, 1917, ch. — ("Second Liberty Bond Act"), 679.

Sec. 1. Bond Issue for National Security and Defense — Amount — Form — Sale, 679.

2. Establishment of Credits for Foreign Governments — Foreign Bond — Purchase, 680.

3. Obligations of Foreign Governments — Conversion into Obligations Containing Different Terms — Sale, 681.

4. Convertible Bonds — Reissuance When Authorized, 682.

5. Certificates of Indebtedness, 683.

6. War-Savings Certificates, 683.

7. Circulation Privilege — Exemption from Taxation, 684.

8. Proceeds from Sale of Bonds, etc. — Where Deposited — Foreign Depositaries, 684.

9. Government Employees — Services in Connection with Sale of Bonds — Compensation, 685.

10. Expenses Incident to Sale of Bonds, etc. — Appropriation — Reports, 685.

11. Issuance of Bonds under Earlier Statute — Interchange of Bonds — Certificates of Indebtedness — Exemption from Taxation or Duties — Former Act Amended, 686.

Sec. 12. Auditing Accounts During War — Place of Auditing — Manner, etc., 686.

13. Date of Termination of War, 689.

14. Bonds Receivable in Payment of Estate and Inheritance Tax, 689.

15. Purchase of Bonds by Government — Report, 689.

16. Payment of Principal and Interest in Foreign Money, 690.

17. Title of Act, 690.

Act of July 9, 1918, ch. — ("Fourth Liberty Bond Act"), 691.

Sec. 3. Bonds Held by Nonresident Alien, Foreign Corporation, etc. — Taxation, 691.

4. Banks, Trust Companies, etc., as Fiscal Agents for Selling Bonds, etc., 691.

5. Title of Act, 691.

SEC. 400. [Bonds—issue for specially designated expenditures—character—redemption.] That the Secretary of the Treasury is hereby authorized to borrow on the credit of the United States from time to time such sums as in his judgment may be required to meet public expenditures on account of the Mexican situation, the construction of the armorplate plant, the construction of the Alaskan Railway, and the purchase of the Danish West Indies, or to reimburse the Treasury for such expenditures, and to prepare and issue therefor bonds of the United States not exceeding in the aggregate \$100,000,000, in such form as he may prescribe, bearing interest payable quarterly at a rate not exceeding three per centum per annum; and such bonds shall be payable, principal and interest, in United States gold coin of the present standard of value, and both principal and interest shall be exempt from all taxes or duties of the United States as well as from taxation in any form by or under State, municipal, or local authority, and shall not be receivable by the Treasurer of the United States as security for the issue of circulating notes to national banks: *Provided*, That such bonds may be disposed of by the Secretary of the Treasury at not less than par, under such regulations as he may prescribe, giving all citizens of the United States an equal opportunity therefor, but no commissions shall be allowed or paid thereon; and a sum not exceeding one-tenth of one per centum of the amount of the bonds herein authorized is hereby appropriated, out of any money in the Treasury not otherwise appropriated, to pay the expenses of preparing, advertising, and issuing the same: *And provided further*, That in addition to such issue of bonds, the Secretary of the Treasury may prepare and issue for the purposes specified in this section any portion of the bonds of the United States now available for issue under authority of section thirty-nine of the Act entitled "An Act to provide revenue, equalize duties, and encourage the industries of the United States, and for other purposes," approved August fifth, nineteen hundred and nine: *And provided further*, That the issue of bonds under authority of this Act and any Panama Canal bonds hereafter issued under authority of section thirty-nine of the Act entitled "An Act to provide revenue, equalize duties, and encourage the industries of the United States, and for other purposes," approved August fifth, nineteen hundred and nine, shall be made redeemable and payable at such times

within fifty years after the date of their issue as the Secretary of the Treasury, in his discretion, may deem advisable. [39 Stat. L. 1003.]

The foregoing section 400 and the following section 401 are a part of Title IV of an Act of March 3, 1917, ch. 159, entitled "An Act To provide revenue to defray the expenses of the increased appropriations for the Army and Navy and the extensions of fortifications and for other purposes." For other sections of this Act see INTERNAL REVENUE, *ante*, pp. 310, 311.

For the Act of Aug. 5, 1909, ch. 6, § 39, mentioned in the text, see 1909 Supp. Fed. Stat. Ann. 834; 8 Fed. Stat. Ann. (2d ed.) 417.

SEC. 401. [Loans — certificates of indebtedness — counterfeiting — former Act amended.] That section thirty-two of an Act entitled "An Act providing ways and means to meet war expenditures, and for other purposes," approved June thirteenth, eighteen hundred and ninety-eight, as amended by section forty of an Act entitled "An Act to provide revenue, equalize duties and encourage the industries of the United States, and for other purposes," approved August fifth, nineteen hundred and nine, be, and the same is hereby, amended to read as follows:

"SEC. 32. That the Secretary of the Treasury is authorized to borrow, from time to time, at a rate of interest not exceeding three per centum per annum, such sum or sums as, in his judgment, may be necessary to meet public expenditures, and to issue therefor certificates of indebtedness in such form and in such denominations as he may prescribe; and each certificate so issued shall be payable, with the interest accrued thereon, at such time, not exceeding one year from the date of its issue, as the Secretary of the Treasury may prescribe: *Provided*, That the sum of such certificates outstanding shall at no time exceed \$300,000,000, and the provisions of existing law respecting counterfeiting and other fraudulent practices are hereby extended to the bonds and certificates of indebtedness authorized by this act." [39 Stat. L. 1003.]

See the notes to the preceding section 400 of this Act.

For the Act of June 13, 1898, ch. 448, § 32, amended by this Act, see 6 Fed. Stat. Ann. 138; 8 Fed. Stat. Ann. (2d ed.) 414.

For the amendatory Act of Aug. 5, 1909, ch. 6, § 40, mentioned in the text, see 1909 Supp. Fed. Stat. Ann. 834.

Joint Resolution To expedite the delivery of materials, equipment, and munitions, and to secure more expeditious construction of ships.

[*Res. of March 4, 1917, ch. 191, 39 Stat. L. 1201.*]

[Bonds for naval expenditures — character.] That the Secretary of the Treasury is hereby authorized to borrow on the credit of the United States from time to time such sums as may be necessary to meet emergency expenditures directed by the President for naval construction or the expediting thereof as may be authorized by law, not exceeding \$150,000,000, or to reimburse the Treasury for such expenditures, and to prepare and issue therefor bonds of the United States in such form and subject to such terms and conditions as the Secretary of the Treasury may prescribe: *Provided*, That the Secretary of the Treasury is hereby authorized to issue serial bonds of the United States maturing in equal amounts from date

of issue to twenty years from date of issue, bearing interest payable semi-annually at a rate not exceeding three per centum per annum: *Provided further*, That such bonds shall be issued at not less than par, shall bear interest not exceeding three per centum per annum, shall not have the circulation privilege attached, and that all citizens of the United States shall be given an equal opportunity to subscribe therefor, but no commission shall be allowed or paid thereon; both principal and interest shall be payable in United States gold coin of the present standard of value, and shall be exempt from all taxes or duties of the United States, as well as from taxation in any form by or under State, municipal, or local authority. In order to pay the necessary expenses connected with said issue of bonds a sum not exceeding one-tenth of one per centum of the amount of bonds herein authorized is hereby appropriated out of any money in the Treasury not otherwise appropriated, to be expended as the Secretary of the Treasury may direct. [39 Stat. L. 1201.]

An Act To authorize an issue of bonds to meet expenditures for the national security and defense, and, for the purpose of assisting in the prosecution of the war, to extend credit to foreign governments, and for other purposes.

[Act of April 24, 1917, ch. —, — Stat. L.—.]

[SEC. 1.] [Bond issue for national security and defense — amount — form — sale.] That the Secretary of the Treasury, with the approval of the President, is hereby authorized to borrow, from time to time, on the credit of the United States for the purposes of this Act, and to meet expenditures authorized for the national security and defense and other public purposes authorized by law not exceeding in the aggregate \$5 000,000,000, exclusive of the sums authorized by section four of this Act, and to issue therefor bonds of the United States.

The bonds herein authorized shall be in such form and subject to such terms and conditions of issue, conversion, redemption, maturities, payment, and rate and time of payment of interest, not exceeding three and one-half per centum per annum as the Secretary of the Treasury may prescribe. The principal and interest thereof shall be payable in United States gold coin of the present standard of value and shall be exempt, both as to principal and interest, from all taxation, except estate or inheritance taxes, imposed by authority of the United States, or its possessions, or by any State or local taxing authority; but such bonds shall not bear the circulation privilege.

The bonds herein authorized shall first be offered at not less than par as a popular loan, under such regulations prescribed by the Secretary of the Treasury as will give all citizens of the United States an equal opportunity to participate therein; and any portion of the bonds so offered and not subscribed for may be otherwise disposed of at not less than par by the Secretary of the Treasury; but no commissions shall be allowed or paid on any bonds issued under authority of this Act. [— Stat. L. —.]

SEC. 2. [Establishment of credits for foreign governments — foreign bonds — purchase.] That for the purpose of more effectually providing for the national security and defense and prosecuting the war by establishing credits in the United States for foreign governments, the Secretary of the Treasury, with the approval of the President, is hereby authorized, on behalf of the United States, to purchase, at par, from such foreign governments then engaged in war with the enemies of the United States, their obligations hereafter issued, bearing the same rate of interest and containing in their essentials the same terms and conditions as those of the United States issued under authority of this Act; to enter into such arrangements as may be necessary or desirable for establishing such credits and for purchasing such obligations of foreign governments and for the subsequent payment thereof before maturity, but such arrangements shall provide that if any of the bonds of the United States issued and used for the purchase of such foreign obligations shall thereafter be converted into other bonds of the United States bearing a higher rate of interest than three and one-half per centum per annum under the provisions of section five of this Act, then and in that event the obligations of such foreign governments held by the United States shall be, by such foreign governments, converted in like manner and extent into obligations bearing the same rate of interest as the bonds of the United States issued under the provisions of section five of this Act. For the purposes of this section there is appropriated, out of any money in the Treasury not otherwise appropriated, the sum of \$3,000,000,000, or so much thereof as may be necessary: *Provided*, That the authority granted by this section to the Secretary of the Treasury to purchase bonds from foreign governments, as aforesaid, shall cease upon the termination of the war between the United States and the Imperial German Government. [— *Stat. L.* —]

SEC. 3. [Obligations of foreign governments — sale.] That the Secretary of the Treasury, under such terms and conditions as he may prescribe, is hereby authorized to receive on or before maturity payment for any obligations of such foreign governments purchased on behalf of the United States, and to sell at not less than the purchase price any of such obligations and to apply the proceeds thereof, and any payments made by foreign governments on account of their said obligations to the redemption or purchase at not more than par and accrued interest of any bonds of the United States issued under authority of this Act; and if such bonds are not available for this purpose the Secretary of the Treasury shall redeem or purchase any other outstanding interest-bearing obligations of the United States which may at such time be subject to call or which may be purchased at not more than par and accrued interest. [— *Stat. L.* —]

SEC. 4. [Issuance of bonds under former statute — borrowing on credit of United States.] That the Secretary of the Treasury, in his discretion, is hereby authorized to issue the bonds not already issued heretofore authorized by section thirty-nine of the Act approved August fifth, nineteen hundred and nine, entitled "An Act to provide revenue, equalize duties, and encourage the industries of the United States, and for other purposes"; section one hundred and twenty-four of the Act approved June

third, nineteen hundred and sixteen, entitled "An Act for making further and more effectual provision for the national defense, and for other purposes"; section thirteen of the Act of September seventh, nineteen hundred and sixteen, entitled "An Act to establish a United States shipping board for the purpose of encouraging, developing, and creating a naval auxiliary and a naval reserve and a merchant marine to meet the requirements of the commerce of the United States with its Territories and possessions and with foreign countries, to regulate carriers by water engaged in the foreign and interstate commerce of the United States, and for other purposes"; section four hundred of the Act approved March third, nineteen hundred and seventeen, entitled "An act to provide increased revenue to defray the expenses of the increased appropriations for the Army and Navy and the extensions of fortifications, and for other purposes"; and the public resolution approved March fourth, nineteen hundred and seventeen, entitled "Joint resolution to expedite the delivery of materials, equipment, and munitions and to secure more expeditious construction of ships," in the manner and under the terms and conditions prescribed in section one of this Act.

That the Secretary of the Treasury is hereby authorized to borrow on the credit of the United States from time to time, in addition to the sum authorized in section one of this Act, such additional amount, not exceeding \$63,945,460 as may be necessary to redeem the three per cent loan of nineteen hundred and eight to nineteen hundred and eighteen, maturing August first, nineteen hundred and eighteen; and to issue therefor bonds of the United States in the manner and under the terms and conditions prescribed in section one of this Act. [— *Stat. L.* —.]

For the Act of Aug. 5, 1909, ch. 6, § 39, mentioned in the text, see 1909 Supp. Fed. Stat. Ann. 834; 4 Fed. Stat. Ann. (2d ed.) 417.

For the Act of June 3, 1916, ch. 134, § 124, mentioned in the text, see 9 Fed. Stat. Ann. (2d ed.) 1340; see also WAR DEPARTMENT AND MILITARY ESTABLISHMENT.

For the Act of Sept. 7, 1916, ch. 451, § 13, mentioned in the text, see SHIPPING AND NAVIGATION, *post*.

The Act of March 3, 1917, ch. 159, § 400, mentioned in the text, is given *supra*, p. 673.

The Res. of March 4, 1917, ch. 191, mentioned in the text, is given *supra*, p. 674.

SEC. 5. [Rate of interest of bonds — higher rate when allowed.] That any series of bonds issued under authority of sections one and four of this Act may, under such terms and conditions as the Secretary of the Treasury may prescribe, be convertible into bonds bearing a higher rate of interest than the rate at which the same were issued if any subsequent series of bonds shall be issued at a higher rate of interest before the termination of the war between the United States and the Imperial German Government, the date of such termination to be fixed by a proclamation of the President of the United States. [— *Stat. L.* —.]

SEC. 6. [Certificates of indebtedness.] That in addition to the bonds authorized by sections one and four of this Act, the Secretary of the Treasury is authorized to borrow from time to time, on the credit of the United States, for the purposes of this Act and to meet public expenditures authorized by law, such sum or sums as, in his judgment, may be necessary,

and to issue therefor certificates of indebtedness at not less than par in such form and subject to such terms and conditions and at such rate of interest, not exceeding three and one-half per centum per annum, as he may prescribe; and each certificate so issued shall be payable, with the interest accrued thereon, at such time, not exceeding one year from the date of its issue, as the Secretary of the Treasury may prescribe. Certificates of indebtedness herein authorized shall not bear the circulation privilege, and the sum of such certificates outstanding shall at no time exceed in the aggregate \$2,000,000,000, and such certificates shall be exempt, both as to principal and interest, from all taxation, except estate or inheritance taxes, imposed by authority of the United States, or its possessions, or by any State or local taxing authority. [— *Stat. L.* —.]

SEC. 7. [Proceeds of bonds and certificates — where deposited.] That the Secretary of the Treasury, in his discretion, is hereby authorized to deposit in such banks and trust companies as he may designate the proceeds, or any part thereof, arising from the sale of the bonds and certificates of indebtedness authorized by this Act, or the bonds previously authorized as described in section four of this Act, and such deposits may bear such rate of interest and be subject to such terms and conditions as the Secretary of the Treasury may prescribe: *Provided*, That the amount so deposited shall not in any case exceed the amount withdrawn from any such bank or trust company and invested in such bonds or certificates of indebtedness plus the amount so invested by such bank or trust company, and such deposits shall be secured in the manner required for other deposits by section fifty-one hundred and fifty-three, Revised Statutes, and amendments thereto: *Provided further*, That the provisions of section fifty-one hundred and ninety-one of the Revised Statutes, as amended by the Federal Reserve Act and the amendments thereof with reference to the reserves required to be kept by national banking associations and other member banks of the Federal Reserve System, shall not apply to deposits of public moneys by the United States in designated depositories. [— *Stat. L.* —.]

For R. S. sec. 5153, mentioned in the text, see 5 Fed. Stat. Ann. 109; 6 Fed. Stat. Ann. (2d ed.) 711.

For R. S. sec. 5191, mentioned in the text, see 5 Fed. Stat. Ann. 124; 6 Fed. Stat. Ann. (2d ed.) 741.

SEC. 8. [Expenses arising under Act — how met — report.] That in order to pay all necessary expenses, including rent, connected with any operations under this Act, a sum not exceeding one-tenth of one per centum of the amount of bonds and one-tenth of one per centum of the amount of certificates of indebtedness herein authorized is hereby appropriated, or as much thereof as may be necessary, out of any money in the Treasury not otherwise appropriated, to be expended as the Secretary of the Treasury may direct: *Provided*, That, in addition to the reports now required by law, the Secretary of the Treasury shall, on the first Monday in December, nineteen hundred and seventeen, and annually thereafter, transmit to the Congress a detailed statement of all expenditures under this Act. [— *Stat. L.* —.]

SEC. 9. [Title of Act.] That the short title of this Act shall be "First Liberty Bond Act." [— *Stat. L.* —.]

This was added as a new section to this Act by the Third Liberty Bond Act of April 4, 1918, ch. —, § 7.

An Act To authorize an additional issue of bonds to meet expenditures for the national security and defense, and, for the purpose of assisting in the prosecution of the war, to extend additional credit to foreign Governments, and for other purposes.

[*Act of Sept. 24, 1917, ch. —, — Stat. L. —.*]

[SEC. 1.] [Bond issue for national security and defense — amount — form — sale.] That the Secretary of the Treasury, with the approval of the President, is hereby authorized to borrow, from time to time, on the credit of the United States for the purposes of this Act, and to meet expenditures authorized for the national security and defense and other public purposes authorized by law, not exceeding in the aggregate \$20,000,000,000, and to issue therefor bonds of the United States, in addition to the \$2,000,000,000 bonds already issued or offered for subscription under authority of the Act approved April twenty-fourth, nineteen hundred and seventeen, entitled "An Act to authorize an issue of bonds to meet expenditures for the national security and defense, and, for the purpose of assisting in the prosecution of the war, to extend credit to foreign governments, and for other purposes": *Provided*, That of this sum \$3,062,945,460 shall be in lieu of that amount of the unissued bonds authorized by sections one and four of the Act approved April twenty-fourth, nineteen hundred and seventeen, \$225,000,000 shall be in lieu of that amount of the unissued bonds authorized by section thirty-nine of the Act approved August fifth, nineteen hundred and nine, \$150,000,000 shall be in lieu of the unissued bonds authorized by the joint resolution approved March fourth, nineteen hundred and seventeen, and \$100,000,000 shall be in lieu of the unissued bonds authorized by section four hundred of the Act approved March third, nineteen hundred and seventeen.

The bonds herein authorized shall be in such form or forms and denomination or denominations and subject to such terms and conditions of issue, conversion, redemption, maturities, payment, and rate or rates of interest, not exceeding four and one-quarter per centum per annum, and time or times of payment of interest, as the Secretary of the Treasury from time to time at or before the issue thereof may prescribe. The principal and interest thereof shall be payable in United States gold coin of the present standard of value.

The bonds herein authorized shall from time to time first be offered at not less than par as a popular loan, under such regulations, prescribed by the Secretary of the Treasury from time to time, as will in his opinion give the people of the United States as nearly as may be an equal opportunity to participate therein, but he may make allotment in full upon applications for smaller amounts of bonds in advance of any date which he may set for the closing of subscriptions and may reject or reduce allotments upon

later applications and applications for larger amounts, and may reject or reduce allotments upon applications from incorporated banks and trust companies for their own account and make allotment in full or larger allotments to others, and may establish a graduated scale of allotments, and may from time to time adopt any or all of said methods, should any such action be deemed by him to be in the public interest: *Provided*, That such reduction or increase of allotments of such bonds shall be made under general rules to be prescribed by said Secretary and shall apply to all subscribers similarly situated. And any portion of the bonds so offered and not taken may be otherwise disposed of by the Secretary of the Treasury in such manner and at such price or prices, not less than par, as he may determine. The Secretary may make special arrangements for subscriptions at not less than par from persons in the military or naval forces of the United States, but any bonds issued to such persons shall be in all respects the same as other bonds of the same issue. [— *Stat. L.* —, as amended by — *Stat. L.* —, — *Stat. L.* —.]

This section was first amended by increasing the aggregate amount of the bond issue from \$7,538,945,460, which was originally authorized, to \$12,000,000,000, changing the interest rate from four per cent per annum to four and one-quarter per cent per annum, and adding the last sentence of the section relating to subscriptions from persons in the military or naval service, by the Third Liberty Bond Act of April 4, 1918, ch. —, § 1.

As so amended it was again amended by striking out the figures "\$12,000,000,000" and inserting in lieu thereof the figures \$20,000,000,000, as given in the text, by the Fourth Liberty Bond Act of July 9, 1918, ch. —, § 1.

The Act of April 24 1917, ch. —, mentioned in the text, is given *supra*, p. 675.

For the Act of Aug. 5, 1909, ch. 6, § 39, mentioned in the text, see 1909 Supp. Fed. Stat. Ann. 834; 8 Fed. Stat. Ann. (2d ed.) 417.

The Res. of March 4, 1917, ch. 191, mentioned in the text, is given *supra*, p. 674.

The Act of March 3, 1917, ch. 159, § 400, mentioned in the text, is given *supra*, p. 673.

SEC. 2. [Establishment of credits for foreign governments—foreign bond—purchase.] That for the purpose of more effectually providing for the national security and defense and prosecuting the war, the Secretary of the Treasury, with the approval of the President, is hereby authorized, on behalf of the United States, to establish credits with the United States for any foreign governments then engaged in war with the enemies of the United States; and, to the extent of the credits so established from time to time, the Secretary of the Treasury is hereby authorized to purchase, at par, from such foreign governments respectively their several obligations hereafter issued, bearing such rate or rates of interest, maturing at such date or dates, not later than the bonds of the United States then last issued under the authority of this Act, or of such Act approved April twenty-fourth, nineteen hundred and seventeen, and containing such terms and conditions as the Secretary of the Treasury may from time to time determine, or to make advances to or for the account of any such foreign governments and to receive such obligations at par for the amount of any such advances; but the rate or rates of interest borne by any such obligations shall not be less than the highest rate borne by any bonds of the United States which, at the time of the acquisition thereof, shall have been issued under authority of said Act approved April twenty-fourth, nineteen hundred and seventeen, or of this Act, and any such obligations shall contain such provisions as the Secretary of the Treasury may from time to

time determine for the conversion of a proportionate part of such obligations into obligations bearing a higher rate of interest if bonds of the United States issued under authority of this Act shall be converted in other bonds of the United States bearing a higher rate of interest, but the rate of interest in such foreign obligations issued upon such conversion shall not be less than the highest rate of interest borne by such bonds of the United States; and the Secretary of the Treasury with the approval of the President, is hereby authorized to enter into such arrangements from time to time with any such foreign Governments as may be necessary or desirable for establishing such credits and for the payment of such obligations of foreign Governments before maturity. For the purposes of this section there is appropriated, out of any money in the Treasury not otherwise appropriated, the sum of \$7,000,000,000, and in addition thereto the unexpended balance of the appropriations made by section two of said Act approved April twenty-fourth, nineteen hundred and seventeen, or so much thereof as may be necessary: *Provided*, That the authority granted by this section to the Secretary of the Treasury to establish credits for foreign Governments, as aforesaid, shall cease upon the termination of the war between the United States and the Imperial German Government. [— *Stat. L.* —, as amended by — *Stat. L.* —, — *Stat. L.* —.]

This section was first amended by substituting in the last sentence the figures \$5,500,000,000 for the figures \$4,000,000,000, which originally appeared, by the Third Liberty Bond Act of April 4, 1918, ch. —, § 2 and as so amended it was again amended by striking out the figures \$5,500,000,000 and inserting in lieu thereof the figures \$7,000,000,000, as given in the text, by the Fourth Liberty Bond Act of July 9, 1918, ch. —, § 2.

The Act of April 24, 1917, ch. —, mentioned in the text, is given *supra*, p. 675.

SEC. 3. [Obligations of foreign governments — conversion into obligations containing different terms — sale.] That the Secretary of the Treasury is hereby authorized, from time to time, to exercise in respect to any obligations of foreign governments acquired under authority of this Act or of said Act approved April twenty-fourth, nineteen hundred and seventeen, any privilege of conversion into obligations bearing interest at a higher rate provided for in or pursuant to this Act or said Act approved April twenty-fourth, nineteen hundred and seventeen, and to convert any short-time obligations of foreign governments which may have been purchased under the authority of this Act or of said Act approved April twenty-fourth, nineteen hundred and seventeen, into long-time obligations of such foreign governments, respectively, maturing not later than the bonds of the United States then last issued under the authority of this Act or of said Act approved April twenty-fourth, nineteen hundred and seventeen, as the case may be, and in such form and terms as the Secretary of the Treasury may prescribe; but the rate or rates of interest borne by any such long-time obligations at the time of their acquisition shall not be less than the rate borne by the short-time obligations so converted into such long-time obligations; and, under such terms and conditions as he may from time to time prescribe, to receive payment, on or before maturity, of any obligations of such foreign governments acquired on behalf of the United States under authority of this Act or of said Act approved April twenty-fourth, nineteen hundred and seventeen, and, with the approval of the President, to sell any of such obligations (but not at

less than the purchase price with accrued interest unless otherwise hereafter provided by law), and to apply the proceeds thereof, and any payments so received from foreign governments on account of the principal of their said obligations, to the redemption or purchase, at not more than par and accrued interest, of any bonds of the United States issued under authority of this Act or of said Act approved April twenty-fourth, nineteen hundred and seventeen; and if such bonds can not be so redeemed or purchased the Secretary of the Treasury shall redeem or purchase any other outstanding interest-bearing obligations of the United States which may at such time be subject to redemption or which can be purchased at not more than par and accrued interest. [— *Stat. L.* —.]

The Act of April 24, 1917, ch. —, mentioned in this section, is given, *supra*, p. 675.

SEC. 4. [Convertible bonds — reissuance when authorized.] That in connection with the issue of any series of bonds under the authority of section one of this Act the Secretary of the Treasury may determine that the bonds of such series shall be convertible as provided in or pursuant to this section, and, in any such case, he may make appropriate provision to that end in offering for subscription the bonds of such series (hereinafter called convertible bonds). In any case of the issue of a series of convertible bonds, if a subsequent series of bonds (not including United States certificates of indebtedness, war savings certificates, and other obligations maturing not more than five years from the issue of such obligations, respectively) bearing interest at a higher rate shall, under the authority of this or any other Act, be issued by the United States before the termination of the war between the United States and the Imperial German Government, then the holders of such convertible bonds shall have the privilege, at the option of the several holders, at any time within such period, after the public offering of bonds of such subsequent series, and under such rules and regulations as the Secretary of the Treasury shall have prescribed, of converting their bonds, at par, into bonds bearing such higher rate of interest at such price not less than par as the Secretary of the Treasury shall have prescribed. The bonds to be issued upon such conversion under this Act shall be substantially the same in form and terms as shall be prescribed by or pursuant to law with respect to the bonds of such subsequent series, not only as to interest rate but also as to convertibility (if future bonds be issued at a still higher rate of interest) or nonconvertibility, and as to exemption from taxation, if any, and in all other respects, except that the bonds issued upon such conversion shall have the same dates of maturity, of principal, and of interest, and be subject to the same terms of redemption before maturity, as the bonds converted; and such bonds shall be issued from time to time if and when and to the extent that the privilege of conversion so conferred shall arise and shall be exercised. If the privilege of conversion so conferred under this Act shall once arise, and shall not be exercised with respect to any convertible bonds within the period so prescribed by the Secretary of the Treasury, then such privilege shall terminate as to such bonds and shall not arise again though again thereafter bonds be issued bearing interest at a higher rate or rates.

That holders of bonds bearing interest at a higher rate than four per centum per annum, whether issued (a) under section one, or (b) upon

conversion of four per centum bonds issued under section one, or (c) upon conversion of three and one-half per centum bonds issued under said Act approved April twenty-fourth, nineteen hundred and seventeen, or (d) upon conversion of four per centum bonds issued upon conversion of such three and one-half per centum bonds, shall not be entitled to any privilege of conversion under or pursuant to this section or otherwise. The provisions of section seven shall extend to all such bonds.

If bonds bearing interest at a higher rate than four per centum per annum shall be issued before July first, nineteen hundred and eighteen, then any bonds bearing interest at the rate of four per centum per annum which shall, after July first, nineteen hundred and eighteen, and before the expiration of the six months' conversion period prescribed by the Secretary of the Treasury, be presented for conversion into bonds bearing interest at such higher rate, shall, for the purpose of computing the amount of interest payable, be deemed to have been converted on the dates for the payment of the semiannual interest on the respective bonds so presented for conversion, last preceding the date of such presentation. [— *Stat. L. —, as amended by — Stat. L. —.*]

The last two paragraphs were added to this section by the Third Liberty Bond Act of April 4, 1918, ch. —, § 3.

The Act of April 24, 1917, ch. —, is given *supra*, p. 675.

SEC. 5. [Certificates of indebtedness.] That in addition to the bonds authorized by section one of this Act the Secretary of the Treasury is authorized to borrow from time to time, on the credit of the United States, for the purposes of this Act and to meet public expenditures authorized by law, such sum or sums as in his judgment may be necessary, and to issue therefor certificates of indebtedness of the United States at not less than par in such form or forms and subject to such terms and conditions and at such rate or rates of interest as he may prescribe; and each certificate so issued shall be payable at such time not exceeding one year from the date of its issue, and may be redeemable before maturity upon such terms and conditions, and the interest accruing thereon shall be payable at such time or times as the Secretary of the Treasury may prescribe. The sum of such certificates outstanding hereunder and under section six of said Act approved April twenty-fourth, nineteen hundred and seventeen, shall not at any one time exceed in the aggregate \$8,000,000,000. [— *Stat. L. —, as amended by — Stat. L. —.*]

This section was amended to read as here given by the Third Liberty Loan Act of April 4, 1918, ch. —, § 4, the amendment consisting of inserting the figures \$8,000,000,000 in the last sentence in lieu of \$4,000,000,000 which originally appeared.

SEC. 6. [War-savings certificates.] That in addition to the bonds authorized by section one of this Act and the certificates of indebtedness authorized by section five of this Act, the Secretary of the Treasury is authorized to borrow from time to time, on the credit of the United States, for the purposes of this Act and to meet public expenditures authorized by law, such sum or sums as in his judgment may be necessary, and to issue therefor, at such price or prices and upon such terms and conditions as he may determine, war-savings certificates of the United States on which

interest to maturity may be discounted in advance at such rate or rates and computed in such manner as he may prescribe. Such war-savings certificates shall be in such form or forms and subject to such terms and conditions, and may have such provisions for payment thereof before maturity, as the Secretary of the Treasury may prescribe. Each war-saving certificate so issued shall be payable at such time, not exceeding five years from the date of its issue, and may be redeemable before maturity, upon such terms and conditions as the Secretary of the Treasury may prescribe. The sum of such war-savings certificates outstanding shall not at any one time exceed in the aggregate \$2,000,000,000. The amount of war-savings certificates sold to any one person at any one time shall not exceed \$100, and it shall not be lawful for any one person at any one time to hold war-savings certificates to an aggregate amount exceeding \$1,000. The Secretary of the Treasury may, under such regulations and upon such terms and conditions as he may prescribe, issue, or cause to be issued, stamps to evidence payments for or on account of such certificates. [— *Stat. L.* —.]

SEC. 7. [Circulation privilege — exemption from taxation.] That none of the bonds authorized by section one, nor of the certificates authorized by section five, or by section six, of this Act, shall bear the circulation privilege. All such bonds and certificates shall be exempt, both as to principal and interest from all taxation now or hereafter imposed by the United States, any State, or any of the possessions of the United States, or by any local taxing authority, except (a) estate or inheritance taxes, and (b) graduated additional income taxes, commonly known as surtaxes, and excess profits and war-profits taxes, now or hereafter imposed by the United States, upon the income or profits of individuals, partnerships, associations, or corporations. The interest on an amount of such bonds and certificates the principal of which does not exceed in the aggregate \$5,000, owned by any individual, partnership, association, or corporation, shall be exempt from the taxes provided for in subdivision (b) of this section. [— *Stat. L.* —.]

SEC. 8. [Proceeds from sale of bonds, etc.— where deposited — foreign depositaries.] That the Secretary of the Treasury, in his discretion, is hereby authorized to deposit, in such incorporated banks and trust companies as he may designate, the proceeds, or any part thereof, arising from the sale of the bonds and certificates of indebtedness and war-savings certificates authorized by this Act, and arising from the payment of income and excess profits taxes, and such deposits shall bear such rate or rates of interest, and shall be secured in such manner, and shall be made upon and subject to such terms and conditions as the Secretary of the Treasury may from time to time prescribe: *Provided*, That the provisions of section fifty-one hundred and ninety-one of the Revised Statutes, as amended by the Federal Reserve Act, and the amendments thereof, with reference to the reserves required to be kept by national banking associations and other member banks of the Federal Reserve System, shall not apply to deposits of public moneys by the United States in designated depositaries. The Secretary of the Treasury is hereby authorized to designate depositaries in

foreign countries with which shall be deposited all public money which it may be necessary or desirable to have on deposit in such countries to provide for current disbursements to the military and naval forces of the United States and to the diplomatic and consular and other representatives of the United States in and about such countries until six months after the termination of the war between the United States and the Imperial German Government, and to prescribe the terms and conditions of such deposits. [— *Stat. L.* — as amended by — *Stat. L.* —.]

This section was amended to read as here given by the Third Liberty Bond Act of April 4, 1918, ch. —, § 5. As originally enacted it was as follows:

"Sec. 8. That the Secretary of the Treasury, in his discretion, is hereby authorized to deposit, in such incorporated banks and trust companies as he may designate, the proceeds, or any part thereof, arising from the sale of the bonds and certificates of indebtedness and war-savings certificates authorized by this Act, and such deposits shall bear such rate or rates of interest, and shall be secured in such manner, and shall be made upon and subject to such terms and conditions, as the Secretary of the Treasury may from time to time prescribe: *Provided*, That the provisions of section fifty-one hundred and ninety-one of the Revised Statutes, as amended by the Federal Reserve Act, and the amendments thereof, with reference to the reserves required to be kept by national banking associations and other member banks of the Federal Reserve System, shall not apply to deposits of public moneys by the United States in designated depositories. The Secretary of the Treasury is hereby authorized to designate depositories in foreign countries, with which shall be deposited all public money which it may be necessary or desirable to have on deposit in such countries to provide for current disbursements to the military and naval forces of the United States and to the diplomatic and consular and other representatives of the United States in and about such countries until six months after the termination of the war between the United States and the Imperial German Government, and to prescribe the terms and conditions of such deposits."

For R. S. sec. 5191, mentioned in the text, see 5 Fed. Stat. Ann. 124; 6 Fed. Stat. Ann. (2d ed.) 741.

SEC. 9. [Government employees — services in connection with sale of bonds — compensation.] That in connection with the operations of advertising, selling, and delivering any bonds, certificates of indebtedness, or war-savings certificates of the United States provided for in this Act, the Postmaster General, under such regulations as he may prescribe, shall require, at the request of the Secretary of the Treasury, the employees of the Post Office Department and of the Postal Service to perform such services as may be necessary, desirable, or practicable, without extra compensation. [— *Stat. L.* —.]

SEC. 10. [Expenses incident to sale of bonds etc.—appropriation — reports.] That in order to pay all necessary expenses, including rent, connected with any operations under this Act, except under section twelve, a sum not exceeding one-fifth of one per centum of the amount of bonds and war-saving certificates and one-tenth of one per centum of the amount of certificates of indebtedness herein authorized is hereby appropriated, or as much thereof as may be necessary, out of any money in the Treasury not otherwise appropriated, to be expended as the Secretary of the Treasury may direct: *Provided*, That in addition to the reports now required by law, the Secretary of the Treasury shall, on the first Monday in December, nineteen hundred and eighteen, and annually thereafter, transmit to the Congress a detailed statement of all expenditures under this Act. [— *Stat. L.* —.]

within fifty years after the date of their issue as the Secretary of the Treasury, in his discretion, may deem advisable. [39 Stat. L. 1002.]

The foregoing section 400 and the following section 401 are a part of Title IV of an Act of March 3, 1917, ch. 159, entitled "An Act To provide revenue to defray the expenses of the increased appropriations for the Army and Navy and the extensions of fortifications and for other purposes." For other sections of this Act see INTERNAL REVENUE, *ante*, pp. 310, 311.

For the Act of Aug. 5, 1909, ch. 6, § 39, mentioned in the text, see 1909 Supp. Fed. Stat. Ann. 834; 8 Fed. Stat. Ann. (2d ed.) 417.

SEC. 401. [Loans — certificates of indebtedness — counterfeiting — former Act amended.] That section thirty-two of an Act entitled "An Act providing ways and means to meet war expenditures, and for other purposes," approved June thirteenth, eighteen hundred and ninety-eight, as amended by section forty of an Act entitled "An Act to provide revenue, equalize duties and encourage the industries of the United States, and for other purposes," approved August fifth, nineteen hundred and nine, be, and the same is hereby, amended to read as follows:

"Sec. 32. That the Secretary of the Treasury is authorized to borrow, from time to time, at a rate of interest not exceeding three per centum per annum, such sum or sums as, in his judgment, may be necessary to meet public expenditures, and to issue therefor certificates of indebtedness in such form and in such denominations as he may prescribe; and each certificate so issued shall be payable, with the interest accrued thereon, at such time, not exceeding one year from the date of its issue, as the Secretary of the Treasury may prescribe: *Provided*, That the sum of such certificates outstanding shall at no time exceed \$300,000,000, and the provisions of existing law respecting counterfeiting and other fraudulent practices are hereby extended to the bonds and certificates of indebtedness authorized by this act." [39 Stat. L. 1003.]

See the notes to the preceding section 400 of this Act.

For the Act of June 13, 1898, ch. 448, § 32, amended by this Act, see 6 Fed. Stat. Ann. 138; 8 Fed. Stat. Ann. (2d ed.) 414.

For the amendatory Act of Aug. 5, 1909, ch. 6, § 40, mentioned in the text, see 1909 Supp. Fed. Stat. Ann. 834.

Joint Resolution To expedite the delivery of materials, equipment, and munitions, and to secure more expeditious construction of ships.

[*Res. of March 4, 1917, ch. 191, 39 Stat. L. 1201.*]

[Bonds for naval expenditures — character.] That the Secretary of the Treasury is hereby authorized to borrow on the credit of the United States from time to time such sums as may be necessary to meet emergency expenditures directed by the President for naval construction or the expediting thereof as may be authorized by law, not exceeding \$150,000,000, or to reimburse the Treasury for such expenditures, and to prepare and issue therefor bonds of the United States in such form and subject to such terms and conditions as the Secretary of the Treasury may prescribe: *Provided*, That the Secretary of the Treasury is hereby authorized to issue serial bonds of the United States maturing in equal amounts from date

of issue to twenty years from date of issue, bearing interest payable semi-annually at a rate not exceeding three per centum per annum: *Provided further*, That such bonds shall be issued at not less than par, shall bear interest not exceeding three per centum per annum, shall not have the circulation privilege attached, and that all citizens of the United States shall be given an equal opportunity to subscribe therefor, but no commission shall be allowed or paid thereon; both principal and interest shall be payable in United States gold coin of the present standard of value, and shall be exempt from all taxes or duties of the United States, as well as from taxation in any form by or under State, municipal, or local authority. In order to pay the necessary expenses connected with said issue of bonds a sum not exceeding one-tenth of one per centum of the amount of bonds herein authorized is hereby appropriated out of any money in the Treasury not otherwise appropriated, to be expended as the Secretary of the Treasury may direct. [39 Stat. L. 1201.]

An Act To authorize an issue of bonds to meet expenditures for the national security and defense, and, for the purpose of assisting in the prosecution of the war, to extend credit to foreign governments, and for other purposes.

[Act of April 24, 1917, ch. —, — Stat. L.—.]

[Sec. 1.] [Bond issue for national security and defense — amount — form — sale.] That the Secretary of the Treasury, with the approval of the President, is hereby authorized to borrow, from time to time, on the credit of the United States for the purposes of this Act, and to meet expenditures authorized for the national security and defense and other public purposes authorized by law not exceeding in the aggregate \$5 000,000,000, exclusive of the sums authorized by section four of this Act, and to issue therefor bonds of the United States.

The bonds herein authorized shall be in such form and subject to such terms and conditions of issue, conversion, redemption, maturities, payment, and rate and time of payment of interest, not exceeding three and one-half per centum per annum as the Secretary of the Treasury may prescribe. The principal and interest thereof shall be payable in United States gold coin of the present standard of value and shall be exempt, both as to principal and interest, from all taxation, except estate or inheritance taxes, imposed by authority of the United States, or its possessions, or by any State or local taxing authority; but such bonds shall not bear the circulation privilege.

The bonds herein authorized shall first be offered at not less than par as a popular loan, under such regulations prescribed by the Secretary of the Treasury as will give all citizens of the United States an equal opportunity to participate therein; and any portion of the bonds so offered and not subscribed for may be otherwise disposed of at not less than par by the Secretary of the Treasury; but no commissions shall be allowed or paid on any bonds issued under authority of this Act. [— Stat. L. —.]

SEC. 2. [Establishment of credits for foreign governments — foreign bonds — purchase.] That for the purpose of more effectually providing for the national security and defense and prosecuting the war by establishing credits in the United States for foreign governments, the Secretary of the Treasury, with the approval of the President, is hereby authorized, on behalf of the United States, to purchase, at par, from such foreign governments then engaged in war with the enemies of the United States, their obligations hereafter issued, bearing the same rate of interest and containing in their essentials the same terms and conditions as those of the United States issued under authority of this Act; to enter into such arrangements as may be necessary or desirable for establishing such credits and for purchasing such obligations of foreign governments and for the subsequent payment thereof before maturity, but such arrangements shall provide that if any of the bonds of the United States issued and used for the purchase of such foreign obligations shall thereafter be converted into other bonds of the United States bearing a higher rate of interest than three and one-half per centum per annum under the provisions of section five of this Act, then and in that event the obligations of such foreign governments held by the United States shall be, by such foreign governments, converted in like manner and extent into obligations bearing the same rate of interest as the bonds of the United States issued under the provisions of section five of this Act. For the purposes of this section there is appropriated, out of any money in the Treasury not otherwise appropriated, the sum of \$3,000,000,000, or so much thereof as may be necessary: *Provided*, That the authority granted by this section to the Secretary of the Treasury to purchase bonds from foreign governments, as aforesaid, shall cease upon the termination of the war between the United States and the Imperial German Government. [— *Stat. L.* —.]

SEC. 3. [Obligations of foreign governments — sale.] That the Secretary of the Treasury, under such terms and conditions as he may prescribe, is hereby authorized to receive on or before maturity payment for any obligations of such foreign governments purchased on behalf of the United States, and to sell at not less than the purchase price any of such obligations and to apply the proceeds thereof, and any payments made by foreign governments on account of their said obligations to the redemption or purchase at not more than par and accrued interest of any bonds of the United States issued under authority of this Act; and if such bonds are not available for this purpose the Secretary of the Treasury shall redeem or purchase any other outstanding interest-bearing obligations of the United States which may at such time be subject to call or which may be purchased at not more than par and accrued interest. [— *Stat. L.* —.]

SEC. 4. [Issuance of bonds under former statute — borrowing on credit of United States.] That the Secretary of the Treasury, in his discretion, is hereby authorized to issue the bonds not already issued heretofore authorized by section thirty-nine of the Act approved August fifth, nineteen hundred and nine, entitled "An Act to provide revenue, equalize duties, and encourage the industries of the United States, and for other purposes"; section one hundred and twenty-four of the Act approved June

third, nineteen hundred and sixteen, entitled "An Act for making further and more effectual provision for the national defense, and for other purposes"; section thirteen of the Act of September seventh, nineteen hundred and sixteen, entitled "An Act to establish a United States shipping board for the purpose of encouraging, developing, and creating a naval auxiliary and a naval reserve and a merchant marine to meet the requirements of the commerce of the United States with its Territories and possessions and with foreign countries, to regulate carriers by water engaged in the foreign and interstate commerce of the United States, and for other purposes"; section four hundred of the Act approved March third, nineteen hundred and seventeen, entitled "An act to provide increased revenue to defray the expenses of the increased appropriations for the Army and Navy and the extensions of fortifications, and for other purposes"; and the public resolution approved March fourth, nineteen hundred and seventeen, entitled "Joint resolution to expedite the delivery of materials, equipment, and munitions and to secure more expeditious construction of ships," in the manner and under the terms and conditions prescribed in section one of this Act.

That the Secretary of the Treasury is hereby authorized to borrow on the credit of the United States from time to time, in addition to the sum authorized in section one of this Act, such additional amount, not exceeding \$63,945,460 as may be necessary to redeem the three per cent loan of nineteen hundred and eight to nineteen hundred and eighteen, maturing August first, nineteen hundred and eighteen; and to issue therefor bonds of the United States in the manner and under the terms and conditions prescribed in section one of this Act. [— *Stat. L.* —.]

For the Act of Aug. 5, 1909, ch. 6, § 39, mentioned in the text, see 1909 Supp. Fed. Stat. Ann. 834; 4 Fed. Stat. Ann. (2d ed.) 417.

For the Act of June 3, 1916, ch. 134, § 124, mentioned in the text, see 9 Fed. Stat. Ann. (2d ed.) 1340; see also WAR DEPARTMENT AND MILITARY ESTABLISHMENT.

For the Act of Sept. 7, 1916, ch. 451, § 13, mentioned in the text, see SHIPPING AND NAVIGATION, *post*.

The Act of March 3, 1917, ch. 159, § 400, mentioned in the text, is given *supra*, p. 673.

The Res. of March 4, 1917, ch. 191, mentioned in the text, is given *supra*, p. 674.

SEC. 5. [Rate of interest of bonds — higher rate when allowed.] That any series of bonds issued under authority of sections one and four of this Act may, under such terms and conditions as the Secretary of the Treasury may prescribe, be convertible into bonds bearing a higher rate of interest than the rate at which the same were issued if any subsequent series of bonds shall be issued at a higher rate of interest before the termination of the war between the United States and the Imperial German Government, the date of such termination to be fixed by a proclamation of the President of the United States. [— *Stat. L.* —.]

SEC. 6. [Certificates of indebtedness.] That in addition to the bonds authorized by sections one and four of this Act, the Secretary of the Treasury is authorized to borrow from time to time, on the credit of the United States, for the purposes of this Act and to meet public expenditures authorized by law, such sum or sums as, in his judgment, may be necessary,

and to issue therefor certificates of indebtedness at not less than par in such form and subject to such terms and conditions and at such rate of interest, not exceeding three and one-half per centum per annum, as he may prescribe; and each certificate so issued shall be payable, with the interest accrued thereon, at such time, not exceeding one year from the date of its issue, as the Secretary of the Treasury may prescribe. Certificates of indebtedness herein authorized shall not bear the circulation privilege, and the sum of such certificates outstanding shall at no time exceed in the aggregate \$2,000,000,000, and such certificates shall be exempt, both as to principal and interest, from all taxation, except estate or inheritance taxes, imposed by authority of the United States, or its possessions, or by any State or local taxing authority. [— *Stat. L.* —.]

SEC. 7. [Proceeds of bonds and certificates — where deposited.] That the Secretary of the Treasury, in his discretion, is hereby authorized to deposit in such banks and trust companies as he may designate the proceeds, or any part thereof, arising from the sale of the bonds and certificates of indebtedness authorized by this Act, or the bonds previously authorized as described in section four of this Act, and such deposits may bear such rate of interest and be subject to such terms and conditions as the Secretary of the Treasury may prescribe: *Provided*, That the amount so deposited shall not in any case exceed the amount withdrawn from any such bank or trust company and invested in such bonds or certificates of indebtedness plus the amount so invested by such bank or trust company, and such deposits shall be secured in the manner required for other deposits by section fifty-one hundred and fifty-three, Revised Statutes, and amendments thereto: *Provided further*, That the provisions of section fifty-one hundred and ninety-one of the Revised Statutes, as amended by the Federal Reserve Act and the amendments thereof with reference to the reserves required to be kept by national banking associations and other member banks of the Federal Reserve System, shall not apply to deposits of public moneys by the United States in designated depositories. [— *Stat. L.* —.]

For R. S. sec. 5153, mentioned in the text, see 5 Fed. Stat. Ann. 109; 6 Fed. Stat. Ann. (2d ed.) 711.

For R. S. sec. 5191, mentioned in the text, see 5 Fed. Stat. Ann. 124; 6 Fed. Stat. Ann. (2d ed.) 741.

SEC. 8. [Expenses arising under Act — how met — report.] That in order to pay all necessary expenses, including rent, connected with any operations under this Act, a sum not exceeding one-tenth of one per centum of the amount of bonds and one-tenth of one per centum of the amount of certificates of indebtedness herein authorized is hereby appropriated, or as much thereof as may be necessary, out of any money in the Treasury not otherwise appropriated, to be expended as the Secretary of the Treasury may direct: *Provided*, That, in addition to the reports now required by law, the Secretary of the Treasury shall, on the first Monday in December, nineteen hundred and seventeen, and annually thereafter, transmit to the Congress a detailed statement of all expenditures under this Act. [— *Stat. L.* —.]

SEC. 9. [Title of Act.] That the short title of this Act shall be "First Liberty Bond Act." [— *Stat. L.* —.]

This was added as a new section to this Act by the Third Liberty Bond Act of April 4, 1918, ch. —, § 7.

An Act To authorize an additional issue of bonds to meet expenditures for the national security and defense, and, for the purpose of assisting in the prosecution of the war, to extend additional credit to foreign Governments, and for other purposes.

[*Act of Sept. 24, 1917, ch. —, — Stat. L. —.*]

[SEC. 1.] [Bond issue for national security and defense — amount — form — sale.] That the Secretary of the Treasury, with the approval of the President, is hereby authorized to borrow, from time to time, on the credit of the United States for the purposes of this Act, and to meet expenditures authorized for the national security and defense and other public purposes authorized by law, not exceeding in the aggregate \$20,000,000,000, and to issue therefor bonds of the United States, in addition to the \$2,000,000,000 bonds already issued or offered for subscription under authority of the Act approved April twenty-fourth, nineteen hundred and seventeen, entitled "An Act to authorize an issue of bonds to meet expenditures for the national security and defense, and, for the purpose of assisting in the prosecution of the war, to extend credit to foreign governments, and for other purposes": *Provided*, That of this sum \$3,062,945,460 shall be in lieu of that amount of the unissued bonds authorized by sections one and four of the Act approved April twenty-fourth, nineteen hundred and seventeen, \$225,000,000 shall be in lieu of that amount of the unissued bonds authorized by section thirty-nine of the Act approved August fifth, nineteen hundred and nine, \$150,000,000 shall be in lieu of the unissued bonds authorized by the joint resolution approved March fourth, nineteen hundred and seventeen, and \$100,000,000 shall be in lieu of the unissued bonds authorized by section four hundred of the Act approved March third, nineteen hundred and seventeen.

The bonds herein authorized shall be in such form or forms and denomination or denominations and subject to such terms and conditions of issue, conversion, redemption, maturities, payment, and rate or rates of interest, not exceeding four and one-quarter per centum per annum, and time or times of payment of interest, as the Secretary of the Treasury from time to time at or before the issue thereof may prescribe. The principal and interest thereof shall be payable in United States gold coin of the present standard of value.

The bonds herein authorized shall from time to time first be offered at not less than par as a popular loan, under such regulations, prescribed by the Secretary of the Treasury from time to time, as will in his opinion give the people of the United States as nearly as may be an equal opportunity to participate therein, but he may make allotment in full upon applications for smaller amounts of bonds in advance of any date which he may set for the closing of subscriptions and may reject or reduce allotments upon

later applications and applications for larger amounts, and may reject or reduce allotments upon applications from incorporated banks and trust companies for their own account and make allotment in full or larger allotments to others, and may establish a graduated scale of allotments, and may from time to time adopt any or all of said methods, should any such action be deemed by him to be in the public interest: *Provided*, That such reduction or increase of allotments of such bonds shall be made under general rules to be prescribed by said Secretary and shall apply to all subscribers similarly situated. And any portion of the bonds so offered and not taken may be otherwise disposed of by the Secretary of the Treasury in such manner and at such price or prices, not less than par, as he may determine. The Secretary may make special arrangements for subscriptions at not less than par from persons in the military or naval forces of the United States, but any bonds issued to such persons shall be in all respects the same as other bonds of the same issue. [— *Stat. L.* —, as amended by — *Stat. L.* —, — *Stat. L.* —.]

This section was first amended by increasing the aggregate amount of the bond issue from \$7,538,945,460, which was originally authorized, to \$12,000,000,000, changing the interest rate from four per cent per annum to four and one-quarter per cent per annum, and adding the last sentence of the section relating to subscriptions from persons in the military or naval service, by the Third Liberty Bond Act of April 4, 1918, ch. —, § 1.

As so amended it was again amended by striking out the figures “\$12,000,000,000” and inserting in lieu thereof the figures \$20,000,000,000, as given in the text, by the Fourth Liberty Bond Act of July 9, 1918, ch. —, § 1.

The Act of April 24 1917, ch. —, mentioned in the text, is given *supra*, p. 675.

For the Act of Aug. 5, 1909, ch. 6, § 39, mentioned in the text, see 1909 Supp. Fed. Stat. Ann. 834; 8 Fed. Stat. Ann. (2d ed.) 417.

The Res. of March 4, 1917, ch. 191, mentioned in the text, is given *supra*, p. 674.

The Act of March 3, 1917, ch. 159, § 400, mentioned in the text, is given *supra*, p. 673.

SEC. 2. [Establishment of credits for foreign governments — foreign bond — purchase.] That for the purpose of more effectually providing for the national security and defense and prosecuting the war, the Secretary of the Treasury, with the approval of the President, is hereby authorized, on behalf of the United States, to establish credits with the United States for any foreign governments then engaged in war with the enemies of the United States; and, to the extent of the credits so established from time to time, the Secretary of the Treasury is hereby authorized to purchase, at par, from such foreign governments respectively their several obligations hereafter issued, bearing such rate or rates of interest, maturing at such date or dates, not later than the bonds of the United States then last issued under the authority of this Act, or of such Act approved April twenty-fourth, nineteen hundred and seventeen, and containing such terms and conditions as the Secretary of the Treasury may from time to time determine, or to make advances to or for the account of any such foreign governments and to receive such obligations at par for the amount of any such advances; but the rate or rates of interest borne by any such obligations shall not be less than the highest rate borne by any bonds of the United States which, at the time of the acquisition thereof, shall have been issued under authority of said Act approved April twenty-fourth, nineteen hundred and seventeen, or of this Act, and any such obligations shall contain such provisions as the Secretary of the Treasury may from time to

time determine for the conversion of a proportionate part of such obligations into obligations bearing a higher rate of interest if bonds of the United States issued under authority of this Act shall be converted in other bonds of the United States bearing a higher rate of interest, but the rate of interest in such foreign obligations issued upon such conversion shall not be less than the highest rate of interest borne by such bonds of the United States; and the Secretary of the Treasury with the approval of the President, is hereby authorized to enter into such arrangements from time to time with any such foreign Governments as may be necessary or desirable for establishing such credits and for the payment of such obligations of foreign Governments before maturity. For the purposes of this section there is appropriated, out of any money in the Treasury not otherwise appropriated, the sum of \$7,000,000,000, and in addition thereto the unexpended balance of the appropriations made by section two of said Act approved April twenty-fourth, nineteen hundred and seventeen, or so much thereof as may be necessary: *Provided*, That the authority granted by this section to the Secretary of the Treasury to establish credits for foreign Governments, as aforesaid, shall cease upon the termination of the war between the United States and the Imperial German Government. [— *Stat. L.* —, as amended by — *Stat. L.* —, — *Stat. L.* —.]

This section was first amended by substituting in the last sentence the figures \$5,500,000,000 for the figures \$4,000,000,000, which originally appeared, by the Third Liberty Bond Act of April 4, 1918, ch. —, § 2 and as so amended it was again amended by striking out the figures \$5,500,000,000 and inserting in lieu thereof the figures \$7,000,000,000, as given in the text, by the Fourth Liberty Bond Act of July 9, 1918, ch. —, § 2.

The Act of April 24, 1917, ch. —, mentioned in the text, is given *supra*, p. 675.

SEC. 3. [Obligations of foreign governments — conversion into obligations containing different terms — sale.] That the Secretary of the Treasury is hereby authorized, from time to time, to exercise in respect to any obligations of foreign governments acquired under authority of this Act or of said Act approved April twenty-fourth, nineteen hundred and seventeen, any privilege of conversion into obligations bearing interest at a higher rate provided for in or pursuant to this Act or said Act approved April twenty-fourth, nineteen hundred and seventeen, and to convert any short-time obligations of foreign governments which may have been purchased under the authority of this Act or of said Act approved April twenty-fourth, nineteen hundred and seventeen, into long-time obligations of such foreign governments, respectively, maturing not later than the bonds of the United States then last issued under the authority of this Act or of said Act approved April twenty-fourth, nineteen hundred and seventeen, as the case may be, and in such form and terms as the Secretary of the Treasury may prescribe; but the rate or rates of interest borne by any such long-time obligations at the time of their acquisition shall not be less than the rate borne by the short-time obligations so converted into such long-time obligations; and, under such terms and conditions as he may from time to time prescribe, to receive payment, on or before maturity, of any obligations of such foreign governments acquired on behalf of the United States under authority of this Act or of said Act approved April twenty-fourth, nineteen hundred and seventeen, and, with the approval of the President, to sell any of such obligations (but not at

less than the purchase price with accrued interest unless otherwise hereafter provided by law), and to apply the proceeds thereof, and any payments so received from foreign governments on account of the principal of their said obligations, to the redemption or purchase, at not more than par and accrued interest, of any bonds of the United States issued under authority of this Act or of said Act approved April twenty-fourth, nineteen hundred and seventeen; and if such bonds can not be so redeemed or purchased the Secretary of the Treasury shall redeem or purchase any other outstanding interest-bearing obligations of the United States which may at such time be subject to redemption or which can be purchased at not more than par and accrued interest. [— *Stat. L.* —.]

The Act of April 24, 1917, ch. —, mentioned in this section, is given, *supra*, p. 675.

SEC. 4. [Convertible bonds — reissuance when authorized.] That in connection with the issue of any series of bonds under the authority of section one of this Act the Secretary of the Treasury may determine that the bonds of such series shall be convertible as provided in or pursuant to this section, and, in any such case, he may make appropriate provision to that end in offering for subscription the bonds of such series (hereinafter called convertible bonds). In any case of the issue of a series of convertible bonds, if a subsequent series of bonds (not including United States certificates of indebtedness, war savings certificates, and other obligations maturing not more than five years from the issue of such obligations, respectively) bearing interest at a higher rate shall, under the authority of this or any other Act, be issued by the United States before the termination of the war between the United States and the Imperial German Government, then the holders of such convertible bonds shall have the privilege, at the option of the several holders, at any time within such period, after the public offering of bonds of such subsequent series, and under such rules and regulations as the Secretary of the Treasury shall have prescribed, of converting their bonds, at par, into bonds bearing such higher rate of interest at such price not less than par as the Secretary of the Treasury shall have prescribed. The bonds to be issued upon such conversion under this Act shall be substantially the same in form and terms as shall be prescribed by or pursuant to law with respect to the bonds of such subsequent series, not only as to interest rate but also as to convertibility (if future bonds be issued at a still higher rate of interest) or nonconvertibility, and as to exemption from taxation, if any, and in all other respects, except that the bonds issued upon such conversion shall have the same dates of maturity, of principal, and of interest, and be subject to the same terms of redemption before maturity, as the bonds converted; and such bonds shall be issued from time to time if and when and to the extent that the privilege of conversion so conferred shall arise and shall be exercised. If the privilege of conversion so conferred under this Act shall once arise, and shall not be exercised with respect to any convertible bonds within the period so prescribed by the Secretary of the Treasury, then such privilege shall terminate as to such bonds and shall not arise again though again thereafter bonds be issued bearing interest at a higher rate or rates.

That holders of bonds bearing interest at a higher rate than four per centum per annum, whether issued (a) under section one, or (b) upon

conversion of four per centum bonds issued under section one, or (c) upon conversion of three and one-half per centum bonds issued under said Act approved April twenty-fourth, nineteen hundred and seventeen, or (d) upon conversion of four per centum bonds issued upon conversion of such three and one-half per centum bonds, shall not be entitled to any privilege of conversion under or pursuant to this section or otherwise. The provisions of section seven shall extend to all such bonds.

If bonds bearing interest at a higher rate than four per centum per annum shall be issued before July first, nineteen hundred and eighteen, then any bonds bearing interest at the rate of four per centum per annum which shall, after July first, nineteen hundred and eighteen, and before the expiration of the six months' conversion period prescribed by the Secretary of the Treasury, be presented for conversion into bonds bearing interest at such higher rate, shall, for the purpose of computing the amount of interest payable, be deemed to have been converted on the dates for the payment of the semiannual interest on the respective bonds so presented for conversion, last preceding the date of such presentation. [— *Stat. L. —, as amended by — Stat. L. —.*]

The last two paragraphs were added to this section by the Third Liberty Bond Act of April 4, 1918, ch. —, § 3.

The Act of April 24, 1917, ch. —, is given *supra*, p. 675.

SEC. 5. [Certificates of indebtedness.] That in addition to the bonds authorized by section one of this Act the Secretary of the Treasury is authorized to borrow from time to time, on the credit of the United States, for the purposes of this Act and to meet public expenditures authorized by law, such sum or sums as in his judgment may be necessary, and to issue therefor certificates of indebtedness of the United States at not less than par in such form or forms and subject to such terms and conditions and at such rate or rates of interest as he may prescribe; and each certificate so issued shall be payable at such time not exceeding one year from the date of its issue, and may be redeemable before maturity upon such terms and conditions, and the interest accruing thereon shall be payable at such time or times as the Secretary of the Treasury may prescribe. The sum of such certificates outstanding hereunder and under section six of said Act approved April twenty-fourth, nineteen hundred and seventeen, shall not at any one time exceed in the aggregate \$8,000,000,000. [— *Stat. L. —, as amended by — Stat. L. —.*]

This section was amended to read as here given by the Third Liberty Loan Act of April 4, 1918, ch. —, § 4, the amendment consisting of inserting the figures \$8,000,000,000 in the last sentence in lieu of \$4,000,000,000 which originally appeared.

SEC. 6. [War-savings certificates.] That in addition to the bonds authorized by section one of this Act and the certificates of indebtedness authorized by section five of this Act, the Secretary of the Treasury is authorized to borrow from time to time, on the credit of the United States, for the purposes of this Act and to meet public expenditures authorized by law, such sum or sums as in his judgment may be necessary, and to issue therefor, at such price or prices and upon such terms and conditions as he may determine, war-savings certificates of the United States on which

interest to maturity may be discounted in advance at such rate or rates and computed in such manner as he may prescribe. Such war-savings certificates shall be in such form or forms and subject to such terms and conditions, and may have such provisions for payment thereof before maturity, as the Secretary of the Treasury may prescribe. Each war-saving certificate so issued shall be payable at such time, not exceeding five years from the date of its issue, and may be redeemable before maturity, upon such terms and conditions as the Secretary of the Treasury may prescribe. The sum of such war-savings certificates outstanding shall not at any one time exceed in the aggregate \$2,000,000,000. The amount of war-savings certificates sold to any one person at any one time shall not exceed \$100, and it shall not be lawful for any one person at any one time to hold war-savings certificates to an aggregate amount exceeding \$1,000. The Secretary of the Treasury may, under such regulations and upon such terms and conditions as he may prescribe, issue, or cause to be issued, stamps to evidence payments for or on account of such certificates. [— *Stat. L.* —.]

SEC. 7. [Circulation privilege — exemption from taxation.] That none of the bonds authorized by section one, nor of the certificates authorized by section five, or by section six, of this Act, shall bear the circulation privilege. All such bonds and certificates shall be exempt, both as to principal and interest from all taxation now or hereafter imposed by the United States, any State, or any of the possessions of the United States, or by any local taxing authority, except (a) estate or inheritance taxes, and (b) graduated additional income taxes, commonly known as surtaxes, and excess profits and war-profits taxes, now or hereafter imposed by the United States, upon the income or profits of individuals, partnerships, associations, or corporations. The interest on an amount of such bonds and certificates the principal of which does not exceed in the aggregate \$5,000, owned by any individual, partnership, association, or corporation, shall be exempt from the taxes provided for in subdivision (b) of this section. [— *Stat. L.* —.]

SEC. 8. [Proceeds from sale of bonds, etc.— where deposited— foreign depositaries.] That the Secretary of the Treasury, in his discretion, is hereby authorized to deposit, in such incorporated banks and trust companies as he may designate, the proceeds, or any part thereof, arising from the sale of the bonds and certificates of indebtedness and war-savings certificates authorized by this Act, and arising from the payment of income and excess profits taxes, and such deposits shall bear such rate or rates of interest, and shall be secured in such manner, and shall be made upon and subject to such terms and conditions as the Secretary of the Treasury may from time to time prescribe: *Provided*, That the provisions of section fifty-one hundred and ninety-one of the Revised Statutes, as amended by the Federal Reserve Act, and the amendments thereof, with reference to the reserves required to be kept by national banking associations and other member banks of the Federal Reserve System, shall not apply to deposits of public moneys by the United States in designated depositaries. The Secretary of the Treasury is hereby authorized to designate depositaries in

foreign countries with which shall be deposited all public money which it may be necessary or desirable to have on deposit in such countries to provide for current disbursements to the military and naval forces of the United States and to the diplomatic and consular and other representatives of the United States in and about such countries until six months after the termination of the war between the United States and the Imperial German Government, and to prescribe the terms and conditions of such deposits. [— *Stat. L.* — as amended by — *Stat. L.* —.]

This section was amended to read as here given by the Third Liberty Bond Act of April 4, 1918, ch. —, § 5. As originally enacted it was as follows:

"SEC. 8. That the Secretary of the Treasury, in his discretion, is hereby authorized to deposit, in such incorporated banks and trust companies as he may designate, the proceeds, or any part thereof, arising from the sale of the bonds and certificates of indebtedness and war-savings certificates authorized by this Act, and such deposits shall bear such rate or rates of interest, and shall be secured in such manner, and shall be made upon and subject to such terms and conditions, as the Secretary of the Treasury may from time to time prescribe: *Provided*, That the provisions of section fifty-one hundred and ninety-one of the Revised Statutes, as amended by the Federal Reserve Act, and the amendments thereof, with reference to the reserves required to be kept by national banking associations and other member banks of the Federal Reserve System, shall not apply to deposits of public moneys by the United States in designated depositories. The Secretary of the Treasury is hereby authorized to designate depositories in foreign countries, with which shall be deposited all public money which it may be necessary or desirable to have on deposit in such countries to provide for current disbursements to the military and naval forces of the United States and to the diplomatic and consular and other representatives of the United States in and about such countries until six months after the termination of the war between the United States and the Imperial German Government, and to prescribe the terms and conditions of such deposits."

For R. S. sec. 5191, mentioned in the text, see 5 Fed. Stat. Ann. 124; 6 Fed. Stat. Ann. (2d ed.) 741.

SEC. 9. [Government employees — services in connection with sale of bonds — compensation.] That in connection with the operations of advertising, selling, and delivering any bonds, certificates of indebtedness, or war-savings certificates of the United States provided for in this Act, the Postmaster General, under such regulations as he may prescribe, shall require, at the request of the Secretary of the Treasury, the employees of the Post Office Department and of the Postal Service to perform such services as may be necessary, desirable, or practicable, without extra compensation. [— *Stat. L.* —.]

SEC. 10. [Expenses incident to sale of bonds etc.—appropriation — reports.] That in order to pay all necessary expenses, including rent, connected with any operations under this Act, except under section twelve, a sum not exceeding one-fifth of one per centum of the amount of bonds and war-saving certificates and one-tenth of one per centum of the amount of certificates of indebtedness herein authorized is hereby appropriated, or as much thereof as may be necessary, out of any money in the Treasury not otherwise appropriated, to be expended as the Secretary of the Treasury may direct: *Provided*, That in addition to the reports now required by law, the Secretary of the Treasury shall, on the first Monday in December, nineteen hundred and eighteen, and annually thereafter, transmit to the Congress a detailed statement of all expenditures under this Act. [— *Stat. L.* —.]

SEC. 11. [Issuance of bonds under earlier statute—interchange of bonds—certificates of indebtedness—exemption from taxation or duties—former Act amended.] That bonds shall not be issued under authority of sections one and four of said Act approved April twenty-fourth, nineteen hundred and seventeen; in addition to the \$2,000,000,000 thereof heretofore issued or offered for subscription, but bonds shall be issued from time to time upon the interchange of such bonds of different denominations and of coupon and registered bonds and upon the transfer of registered bonds, under such rules and regulations as the Secretary of the Treasury shall prescribe, and, if and to the extent that the privilege of conversion provided for in such bonds shall arise and shall be exercised, in accordance with such provision for such conversion. No bonds shall be issued under authority of the several sections of Acts and of the resolution mentioned in said section four of the Act approved April twenty-fourth, nineteen hundred and seventeen; but the proceeds of the bonds herein authorized may be used for purposes mentioned in said section four of the Act of April twenty-fourth, nineteen hundred and seventeen, and as set forth in the Acts therein enumerated.

That section two of an Act of Congress approved February fourth, nineteen hundred and ten, entitled "An Act prescribing certain provisions and conditions under which bonds and certificates of indebtedness of the United States may be issued, and for other purposes," is hereby amended to read as follows:

"**SEC. 2.** That any certificates of indebtedness hereafter issued shall be exempt from all taxes or duties of the United States (but, in the case of certificates issued after September first, nineteen hundred and seventeen, only if and to the extent provided in connection with the issue thereof), as well as from taxation in any form by or under State, municipal, or local authority; and that a sum not exceeding one-tenth of one per centum of the amount of any certificates of indebtedness issued is hereby appropriated, out of any money in the Treasury not otherwise appropriated, to pay the expenses of preparing, advertising, and issuing the same." [*— Stat. L. —.*]

For the Act of Feb. 4, 1910, ch. 25, § 2, amended by this section, see 1912 Supp. Fed. Stat. Ann. 309; 8 Fed. Stat. Ann. (2d ed.) 418.

SEC. 12. [Auditing accounts during war—place of auditing—manner, etc.] That the Secretary of the Treasury is authorized during the war, whenever it shall appear that the public interests require that any of the accounts of the Military Establishment be audited at any place other than the seat of Government, to direct the Comptroller of the Treasury and the Auditor for the War Department to exercise, either in person or through assistants, the powers and perform the duties of their offices at any place or places away from the seat of Government in the manner that is or may be required by law at the seat of Government and in accordance with the provisions of this section.

(a) That when the Secretary of the Treasury shall exercise the authority herein referred to, the powers and duties of the said comptroller and auditor, under and pursuant to the provisions of the Act of July thirty-

first, eighteen hundred and ninety-four, and all other laws conferring jurisdiction upon those officers, shall be exercised and performed in the same manner as nearly as practicable and with the same effect away from the seat of Government as they are now exercised and performed and have effect at the seat of Government, and decisions authorized by law to be rendered by the comptroller at the request of disbursing officers may be rendered with the same effect by such assistants as may be authorized by him to perform that duty.

(b) That when pursuant to this section the said comptroller and auditor shall perform their duties at a place in a foreign country, the balances arising upon the settlement of accounts and claims of the Military Establishment shall be certified by the auditor to the Division of Bookkeeping and Warrants of the Treasury Department as now provided for the certification of balances by said auditor in Washington, and the balances so found due shall be final and conclusive upon all branches of the Government, except that any person whose account has been settled or the commanding officer of the Army abroad, or the comptroller may obtain a revision of such settlement by the comptroller upon application therefor within three months, the decision to be likewise final and conclusive and the differences arising upon such revision to be certified to and stated by the auditor as now provided by law: *Provided*, That certificates of balances due may be transmitted to and paid by the proper disbursing officer abroad instead of by warrant: *Provided further*, That any person whose account has been settled, or the Secretary of War, may obtain a reopening and review of any settlement made pursuant to this section upon application to the Comptroller of the Treasury in Washington within one year after the close of the war, and the action of the comptroller thereon shall be final and conclusive in the same manner as herein provided in the case of a balance found due by the auditor.

(c) That the comptroller and auditor shall preserve the accounts, and the vouchers and papers connected therewith, and the files of their offices in the foreign country and transmit them to Washington within six months after the close of the war and at such earlier time as may be directed by the Secretary of the Treasury as to any or all accounts, vouchers, papers, and files.

(d) That the Secretary of the Treasury is authorized to appoint an assistant comptroller and an assistant auditor and to fix their compensation, and to designate from among the persons to be employed hereunder one or more to act in the absence or disability of such assistant comptroller and assistant auditor. He shall also prescribe the number and maximum compensation to be paid to agents, accountants, clerks, translators, interpreters, and other persons who may be employed in the work under this section by the comptroller and auditor. The assistant comptroller and assistant auditor shall have full power to perform in a foreign country all the duties with reference to the settlement there of the accounts of the Military Establishment that the comptroller and auditor now have at the seat of Government and in foreign countries under the provisions of this section, and shall perform such duties in accordance with the instructions received from and rules and regulations made by the comptroller and auditor. Such persons as are residing in a foreign country when first employed hereunder

shall not be required to take an oath of office or be required to be employed pursuant to the laws, rules, and regulations relating to the classified civil service, nor shall they be reimbursed for subsistence expenses at their post of duty or for expenses in traveling to or from the United States.

(e) That it shall be the duty of all contracting, purchasing, and disbursing officers to allow any representative of the comptroller or auditor to examine all books, records, and papers in any way connected with the receipt, disbursement, or disposal of public money, and to render such accounts and at such times as may be required by the comptroller. No administrative examination by the War Department shall be required of accounts rendered and settled abroad, and the time within which these accounts shall be rendered by disbursing officers shall be prescribed by the comptroller, who shall have power to waive any delinquency as to time or form in the rendition of these accounts. All contracts connected with accounts to be settled by the auditor abroad shall be filed in his office there.

(f) That any person appointed or employed under the provisions of this section who at the time is in the service of the United States shall, upon termination of his services hereunder, be restored to the position held by him at the time of such employment. No provision of existing law shall be construed to prevent the payment of money appropriated for the salary of any Government officer or employee at the seat of Government who may be detailed to perform duty under this section outside the District of Columbia, and such details are hereby authorized.

(g) That for the payment of the expenses in carrying into effect this section, including traveling expenses, per diem of \$4 in lieu of subsistence for officers and employees absent from Washington, rent, cablegrams, and telegrams, printing, law books, books of reference, periodicals, stationery, office equipment and exchange thereof, supplies, and all other necessary expenses, there is hereby appropriated, out of any money in the Treasury not otherwise appropriated, for the fiscal year ending June thirtieth, nineteen hundred and eighteen, the sum of \$300,000, of which not exceeding \$25,000 may be expended at Washington for the purposes of this section, but no officer or employee shall receive for duty in Washington any compensation other than his regular salary.

(h) That the Secretary of the Treasury may designate not more than two persons employed hereunder to act as special disbursing agents of the appropriation herein, to serve under the direction of the comptroller, and their accounts shall be rendered to and settled by the accounting officers of the Treasury in Washington. All persons employed under this section shall perform such additional duties as the Secretary of the Treasury may direct.

(i) That the comptroller and the auditor, and such persons as may be authorized in writing by either of them, may administer oaths to American citizens in respect to any matter within the jurisdiction of either of said officers and certify the official character, when known, of any foreign officer whose jurat or certificate may be necessary on any paper to be filed with them.

(j) That persons engaged in work abroad under the provisions of this section may purchase from Army stores for cash and at cost price for their own use such articles or stores as may be sold to officers and enlisted men.

(k) That the authority granted under this section shall terminate six months after the close of the war or at such earlier date as the Secretary of the Treasury may direct, and it shall be the duty of the comptroller and auditor to make such reports as the Secretary of the Treasury may require of the expenditures made and work done pursuant to this section, and such reports shall be transmitted to the Congress at such time as he may decide to be compatible with the public interest.

(l) No officers, employees, or agents appointed or employed under this section shall receive more salary or compensation than like officers, employees, or agents of the Government now receive. [— *Stat. L.* —.]

For the Act of July 31, 1894, ch. 174, mentioned in the text, see 7 Fed. Stat. Ann. 332; 9 Fed. Stat. Ann. (2d ed.) 834.

SEC. 13. [Date of termination of war.] That for the purposes of this Act the date of the termination of the war between the United States and the Imperial German Government shall be fixed by proclamation of the President of the United States. [— *Stat. L.* —.]

SEC. 14. [Bonds receivable in payment of estate and inheritance tax.] That any bonds of the United States bearing interest at a higher rate than four per centum per annum (whether issued under section one of this Act or upon conversion of bonds issued under this Act or under said Act approved April twenty-fourth, nineteen hundred and seventeen), which have been owned by any person continuously for at least six months prior to the date of his death, and which upon such date constitute part of his estate, shall, under rules and regulations prescribed by the Secretary of the Treasury, be receivable by the United States at par and accrued interest in payment of any estate or inheritance taxes imposed by the United States, under or by virtue of any present or future law upon such estate or the inheritance thereof. [— *Stat. L.* —.]

This section 14 and the following sections 15, 16 and 17 were added to this Act by the Third Liberty Bond Act of April 4, 1918, ch. —, § 6, entitled "An Act to amend an Act approved September twenty-fourth, nineteen hundred and seventeen, entitled 'An Act to authorize an additional issue of bonds to meet expenditures for the national security and defense, and, for the purpose of assisting in the prosecution of the war, to extend additional credit to foreign governments, and for other purposes.'"

Sections 1-5 of said amending Act amended sections 1, 2, 4, 5 and 8 of this Act, *supra*, p. 679 *et seq.* Section 7 amended the Act of April 24, 1917, ch. —, by adding thereto a new section 9 given *supra*, p. 679. Section 8 was as follows:

"**SEC. 8.** That the short title of this Act shall be 'Third Liberty Bond Act.'"

SEC. 15. [Purchase of bonds by government—report.] That the Secretary of the Treasury is authorized, from time to time, until the expiration of one year after the termination of the war, to purchase bonds issued under authority of this Act, including bonds issued upon conversion of bonds issued under this Act or said Act approved April twenty-fourth, nineteen hundred and seventeen, at such prices and upon such terms and conditions as he may prescribe. The par amount of bonds of any such series which may be purchased in the twelve months' period beginning on the date of issue shall not exceed one-twentieth of the par amount of bonds of such series originally issued, and in each twelve months' period thereafter, shall not exceed one-twentieth of the amount of the bonds of such

series outstanding at the beginning of such twelve months' period. The average cost of the bonds of any series purchased in any such twelve months' period shall not exceed par and accrued interest.

For the purposes of this section the Secretary of the Treasury shall set aside, out of any money in the Treasury not otherwise appropriated, a sum not exceeding one-twentieth of the amount of such bonds issued before April first, nineteen hundred and eighteen, and as and when any more such bonds are issued he shall set aside a sum not exceeding one-twentieth thereof. Whenever, by reason of purchases of bonds, as provided in this section, the amount so set aside falls below the sum which he deems necessary for the purposes of this section, the Secretary of the Treasury shall set aside such amount as he shall deem necessary, but not more than enough to bring the entire amount so set aside at such time up to one-twentieth of the amount of such bonds then outstanding. The amount so set aside by the Secretary of the Treasury is hereby appropriated for the purposes of this section, to be available until the expiration of one year after the termination of the war.

The Secretary of the Treasury shall make to Congress at the beginning of each regular session a report including a detailed statement of the operations under this section. [— *Stat. L.* —.]

See the note to the preceding section 14 of this Act.

SEC. 16. [Payment of principal and interest in foreign money.] That any of the bonds or certificates of indebtedness authorized by this Act may be issued by the Secretary of the Treasury payable, principal and interest, in any foreign money or foreign moneys, as expressed in such bonds or certificates, but not also in United States gold coin, and he may dispose of such bonds or certificates in such manner and at such prices, not less than par, as he may determine, without compliance with the provisions of the third paragraph of section one. In determining the amount of bonds and certificates issuable under this Act the dollar equivalent of the amount of any bonds or certificates payable in foreign money or foreign moneys shall be determined by the par of exchange at the date of issue thereof, as estimated by the Director of the Mint, and proclaimed by the Secretary of the Treasury, in pursuance of the provisions of section twenty-five of the Act approved August twenty-seventh, eighteen hundred and ninety-four, entitled "An Act to reduce taxation, to provide revenue for the Government, and for other purposes." The Secretary of the Treasury may designate depositaries in foreign countries, with which may be deposited as he may determine all or any part of the proceeds of any bonds or certificates authorized by this Act, payable in foreign money or foreign moneys. [— *Stat. L.* —.]

See the note to section 14 of this Act, *supra*, p. 689.

For the Act of Aug. 27, 1894, ch. 349, § 25, mentioned in the text, see 2 Fed. Stat. Ann. 143; 2 Fed. Stat. Ann. (2d ed.) 368.

SEC. 17. [Title of Act.] That the short title of this Act shall be "Second Liberty Bond Act." [— *Stat. L.* —.]

See the note to section 14 of this Act, *supra*, p. 689.

SEC. 3. [Bonds held by nonresident alien, foreign corporation, etc.—taxation.] That notwithstanding the provisions of the Second Liberty Bond Act, as amended by the Third Liberty Bond Act, or of the War Finance Corporation Act, bonds and certificates of indebtedness of the United States payable in any foreign money or foreign moneys, and bonds of the War Finance Corporation payable in any foreign money or foreign moneys exclusively or in the alternative, shall, if and to the extent expressed in such bonds at the time of their issue, with the approval of the Secretary of the Treasury, while beneficially owned by a nonresident alien individual, or by a foreign corporation, partnership, or association, not engaged in business in the United States, be exempt both as to principal and interest from any and all taxation now or hereafter imposed by the United States, any State, or any of the possessions of the United States, or by any local taxing authority. [— *Stat. L.* —.]

This section 3 and the following sections 4, 5, are from the Fourth Liberty Bond Act of July 9, 1918, ch. —, entitled "An Act To authorize an additional issue of bonds to meet expenditures for the national security and defense, and, for the purpose of assisting in the prosecution of the war, to extend additional credit to foreign Governments, and for other purposes."

Sections 1 and 2 of this Act amended the Act of Sept. 24, 1917, ch. —, §§ 1, 2, *supra*, pp. 675, 676.

SEC. 4. [Banks, trust companies, etc., as fiscal agents for selling bonds, etc.] That any incorporated bank or trust company designated as a depository by the Secretary of the Treasury under the authority conferred by section eight of the Second Liberty Bond Act, as amended by the Third Liberty Bond Act, which gives security for such deposits as, and to amounts, by him prescribed, may, upon and subject to such terms and conditions as the Secretary of the Treasury may prescribe, act as a fiscal agent of the United States in connection with the operations of selling and delivering any bonds, certificates of indebtedness or war savings certificates of the United States. [— *Stat. L.* —.]

See the note to the preceding section 3 of this Act.

The Act of Sept. 24, 1917, ch. —, § 8, mentioned in the text, is given *supra*, p. 684.

SEC. 5. [Title of Act.] That the short title of this Act shall be "Fourth Liberty Bond Act." [— *Stat. L.* —.]

See the note to the preceding section 3 of this Act.

PUBLIC HEALTH

See HEALTH AND QUARANTINE.

PUBLIC LANDS

Act of June 9, 1916, ch. 137, 694.

- Sec. 1. Certain Railroad Lands Revested in Government, 694.*
2. Classification of Revested Lands, 695.
3. Effect of Classification — Mineral Lands — Disposition of Timber Thereon, 696.
4. Nonmineral Lands — Disposition of Timber, 696.
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6. Purchasers of Timber — Liability for Commission — Compensation of Register and Receiver, 698.
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Sec. 1. Stock-Raising Homesteads — Entry — Unappropriated Unreserved Public Land, 708.

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Act of Aug. 10, 1917, ch. —, 716.

Sec. 10. Enlarged Homesteads — Lands without Water for Domestic Uses — Residence — Cultivation — Former Act Amended, 716.

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Homestead Settlers and Entrymen — Leave of Absence Pending War, 717.

Act of March 21, 1918, ch. —, 717.

Desert Land Entries — Final Proof — Extension of Time, 717.

Act of July 1, 1918, ch. —, 717.

Sec. 1. Local Land Offices — Registers and Receivers — Expenses, 717.

Hearings — Depositions — Fees, 718.

Act of July 3, 1918, ch. —, 718.

Sec. 1. Clerks from Office of Surveyor General — Detail — Traveling Expenses, 718.

CROSS-REFERENCES

Homesteads in Alaska, see ALASKA.

Declaration of Intention by Entryman, see NATURALIZATION.

See also *MINERAL LANDS, MINES AND MINING; PUBLIC PARKS; WATERS.*

An Act To alter and amend an Act entitled "An Act granting lands to aid in the construction of a railroad and telegraph line from the Central Pacific Railroad, in California, to Portland, in Oregon," approved July twenty-fifth, eighteen hundred and sixty-six, as amended by the Acts of eighteen hundred and sixty-eight and eighteen hundred and sixty-nine, and to alter and amend an Act entitled "An Act granting lands to aid in the construction of a railroad and telegraph line from Portland to Astoria and McMinnville, in the State of Oregon," approved May fourth, eighteen hundred and seventy, and for other purposes.

[*Act of June 9, 1916, ch. 137, 39 Stat. L. 218.*]

[SEC. 1.] [Certain railroad lands revested in government.] That the title to so much of the lands granted by the Act of July twenty-fifth, eighteen hundred and sixty-six, entitled "An Act granting lands to aid in the construction of a railroad and telegraph line from the Central Pacific Railroad in California to Portland, in Oregon," as amended by the Acts of eighteen hundred and sixty-eight and eighteen hundred and sixty-nine, for which patents have been issued by the United States, or for which the grantee is entitled to receive patents under said grant, and to so much of the lands granted by the Act of May fourth, eighteen hundred and seventy, entitled "An Act granting lands to aid in the construction of a railroad and telegraph line from Portland to Astoria and McMinnville, in the State of Oregon," for which patents have been issued by the United States, or for which the grantee is entitled to receive patents under said grant, as had not been sold by the Oregon and California Railroad Company prior to July first, nineteen hundred and thirteen, be, and the same is hereby, revested in the United States: *Provided*, That the provisions of this Act shall not apply to the right of way to the extent of one hundred feet in width on each side of the railroad and all lands in actual use by said

railroad company on December ninth, nineteen hundred and fifteen, for depots, sidetracks, wood yards, and standing grounds. [39 Stat. L. 218.]

Preceding the foregoing section was the following preamble:

"Whereas by the Acts of Congress approved April tenth, eighteen hundred and sixty-nine (Fourteenth Statutes at Large, page two hundred and thirty-nine), and May fourth, eighteen hundred and seventy (Sixteenth Statutes at Large, page ninety-four), it was provided that the lands granted to aid in the construction of certain railroads from Portland, in the State of Oregon, to the northern boundary of the State of California, and from Portland to Astoria and McMinnville, in the State of Oregon, should be sold to actual settlers only, in quantities not exceeding one hundred and sixty acres to each person and at prices not greater than \$2.50 per acre; and

"Whereas the Oregon and California Railroad Company, beneficiary of said acts, has violated the terms under which the said lands were granted by selling certain of said lands to persons other than actual settlers, by selling in quantities of more than one-quarter section to each person, by selling at prices in excess of \$2.50 per acre, and by refusing to sell any further portions of such lands to actual settlers at any price, and in so doing has willfully violated the terms of the statutes by which the said lands were granted; and

"Whereas in the suit instituted by the Attorney General of the United States, pursuant to the authority and direction contained in the joint resolution of April thirtieth, nineteen hundred and eight (Thirty-fifth Statutes at Large, page five hundred and seventy-one), the Supreme Court of the United States, in its decision rendered June twenty-first, nineteen hundred and fifteen (Two hundred and thirty-eighth United States, page three hundred and ninety-three), ordered that the Oregon and California Railroad Company be enjoined from making further sales of lands in violation of the law, and that the said railroad company be further enjoined from making any sales whatever of either the land or the timber thereon until Congress should have a reasonable opportunity to provide for the disposition of said lands in accordance with such policy as Congress might deem fitting under the circumstances and at the same time secure to the railroad company all the value conferred by the granting Acts; and

"Whereas it was expressly provided by section twelve of the Act of July twenty-fifth, eighteen hundred and sixty-six (Fourteenth Statutes at Large, page two hundred and thirty-nine), that Congress might at any time, having due regard for the rights of the grantee railroad company, add to, alter, amend, or repeal the Act making the grant; and

"Whereas the Oregon and California Railroad Company and its predecessors in interest received a large sum of money from sales of said land for prices in excess of \$2.50 per acre, and from leases, interest on contracts, and so forth; and

"Whereas the aforesaid granting Acts conferred upon the said railroad company the right to receive not more than \$2.50 per acre for each acre of land so granted: Therefore," etc.

The Acts mentioned in the title of this Act and the first section thereof are the Act of July 25, 1866, ch. 242, 14 Stat. L. 239; the amendatory Act of June 25, 1868, ch. 80, 15 Stat. L. 80, the amendatory Act of April 10, 1869, ch. 27, 16 Stat. L. 47, and the Act of May 4, 1870, ch. 69, 16 Stat. L. 94.

The resolution mentioned in the preamble is the Res. of April 30, 1908, No. 18, 35 Stat. L. 571.

Name of Act.—This Act is known as the Chamberlain-Ferris Act. Oregon, etc., R. C. v. U. S., 243 U. S. 549, 61 U. S. (L. ed.) 890.

Constitutionality.—Vested rights of railway companies whose disregard of the covenants in certain congressional land grant Acts that the lands granted shall be sold to actual settlers only, in quantities not greater than one quarter section to one purchaser, and at a price not exceeding \$2.50 an acre, had made the lands more inviting for speculation than for settlement, were not destroyed without due process of law by the enactment, in

the exercise of the reserved power to alter or repeal, of the provisions of this Act, which revert the title to the unsold lands in the United States, excepting rights of way and lands in actual use for depots, sidetracks, etc., and regulate the disposition of such lands and the distribution of the proceeds, securing to the railway companies \$2.50 an acre, less any off-sets properly chargeable against the railway companies on account of prior sales, the use of the timber, the evading of taxation, etc. Oregon, etc., R. Co. v. U. S., 243 U. S. 549, 61 U. S. (L. ed.) 890.

SEC. 2. [Classification of revested lands.] That the Secretary of the Interior, in cooperation with the Secretary of Agriculture, or otherwise,

is hereby authorized and directed, after due examination in the field, to classify said lands by the smallest legal subdivisions thereof into three classes, as follows:

Class one. Power-site lands, which shall include only such lands as are chiefly valuable for water-power sites, which lands shall be subject to withdrawal and such use and disposition as has been or may be provided by law for other public lands of like character.

Class two. Timberlands, which shall include lands bearing a growth of timber not less than three hundred thousand feet board measure on each forty-acre subdivision.

Class three. Agricultural lands, which shall include all lands not falling within either of the two other classes:

Provided, That any of said lands, however classified, may be reclassified, if, because of a change of conditions or other reasons, such action is required to denote properly the true character and class of such lands: *Provided further*, That all the general laws of the United States now existing or hereafter enacted relating to the granting of rights of way over or permits for the use of public lands shall be applicable to all lands title to which is revested in the United States under the provisions of this Act. All lands disposed of under the provisions of this Act shall be subject to all rights of way which the Secretary of the Interior shall at any time deem necessary for the removal of the timber from any lands of class two. [39 Stat. L. 219.]

SEC. 3. [Effect of classification — mineral lands — disposition of timber thereon.] That the classification provided for by the preceding section shall not operate to exclude from exploration, entry, and disposition, under the mineral land laws of the United States, any of said lands, except power sites, which are chiefly valuable for the mineral deposits contained therein, and the general mineral laws are hereby extended to all of said lands, except power sites: *Provided*, That any person entering mineral lands of class two shall not acquire title to the timber thereon, which shall be sold as hereinafter provided in section four, but he shall have the right to use so much of the timber thereon as may be necessary in the development and operation of his mine until such time as such timber is sold by the United States. [39 Stat. L. 219.]

SEC. 4. [Nonmineral lands — disposition of timber.] That nonmineral lands of class two shall not be disposed of until the Secretary of the Interior has determined and announced that the merchantable timber thereon has been removed, and thereupon said lands shall fall into class three and be disposed of in the manner hereinafter provided for the disposal of lands of that class.

The timber on lands of class two shall be sold for cash by the Secretary of the Interior, in cooperation with the Secretary of Agriculture, or otherwise, to citizens of the United States, associations of such citizens, and corporations organized under the laws of the United States, or any State, Territory, or District thereof, at such times, in such quantities, and under such plan of public competitive bidding as in the judgment of the Secretary

of the Interior may produce the best results: *Provided*, That said Secretary shall have the right to reject any bid where he has reason to believe that the price offered is inadequate, and may reoffer the timber until a satisfactory bid is received: *Provided further*, That upon application of a qualified purchaser that any legal subdivision shall be separately offered for sale such subdivision shall be separately offered before being included in any offer of a larger unit, if such application be filed within ninety days prior to such offer: *And provided further*, That said timber shall be sold as rapidly as reasonable prices can be secured therefor in a normal market.

The Secretary of the Interior shall as soon as the purchase price is fully paid by any person purchasing under the provisions of this section issue to such purchaser a patent conveying the timber and expressly reserving the land to the United States. The timber thus purchased may be cut and removed by the purchaser, his heirs or assigns, within such period as may be fixed by the Secretary of the Interior, which period shall be designated in the patent; all rights under said patent shall cease and terminate at the expiration of said period: *Provided*, That in the event the timber is removed prior to the expiration of said period the Secretary of the Interior shall make due announcement thereof, whereupon all rights under the patent shall cease.

No timber shall be removed until the issuance of patent therefor. All timber sold under this Act shall be subject to the taxing power of the States apart from the land as soon as patents are issued as provided for herein. [39 Stat. L. 219.]

SEC. 5. [Agricultural lands — entry — application of homestead laws.] That nonmineral lands of class three shall be subject to entry under the general provisions of the homestead laws of the United States, except as modified herein, and opened to entry in accordance with the provisions of the Act of September thirtieth, nineteen hundred and thirteen (Thirty-eighth Statutes at Large, page one hundred and thirteen). Fifty cents per acre shall be paid at the time the original entry is allowed and \$2 per acre when final proof is made. The provisions of section twenty-three hundred and one, Revised Statutes, shall not apply to any entry hereunder and no patent shall issue until the entryman has resided upon and cultivated the land for a period of three years, proof of which shall be made at any time within five years from date of entry. The area cultivated shall be such as to satisfy the Secretary of the Interior that the entry is made in good faith for the purpose of settlement and not for speculation: *Provided*, That the payment of \$2.50 per acre shall not be required for homestead entrymen upon lands of class two when the same shall become subject to entry as agricultural lands in class three: *Provided further*, That during the period fixed for the submission of applications to make entry under this section any person duly qualified to enter such lands who has resided thereon, to the same extent and in the same manner as is required under the homestead laws, since the first day of December, nineteen hundred and thirteen, and who has improved the land and devoted some portion thereof to agricultural use, and who shall have maintained his residence to the date of such application, shall have the preferred right to enter the

quarter section upon which he was so residing whether such lands shall be of class two or class three and where such quarter section does not contain more than one million two hundred thousand feet board measure of timber, and where the quarter section contains more than the said quantity of timber such person may enter the forty-acre tract, or lot or lots containing approximately forty acres, upon which his improvements, or the greater part thereof, are situated: *Provided further*, That a prior exercise of the homestead right by any such person shall not be a bar to the exercise of such preference rights: *And provided further*, That all of the following described lands which may become revested in the United States by operation of this Act, to-wit: Township one south, range five east, sections twenty-three and thirty-five; township one south, range six east, sections three, five, seven, nine, seventeen, nineteen, twenty-nine, thirty-one, and thirty-three; township two south, range five east, sections one and three; township two south, range six east, sections one, three, five, seven, nine, and eleven; township two south, range seven east, section seven; township three south, range three east, section fifteen; township four south, range four east, sections eleven and thirteen; township four south, range five east, sections nineteen and twenty-nine; and township twelve south, range seven west, sections fifteen, twenty-one, twenty-three, twenty-seven, thirty-three, and thirty-five, Willamette meridian and base, State of Oregon, shall be withheld from entry or other disposition for a period of two years after the approval hereof. [39 Stat. L. 220.]

For the Act of Sept. 30, 1913, ch. 15, mentioned in the text, see 1914 Supp. Fed. Stat. Ann. 347; 8 Fed. Stat. Ann. (2d ed.) 663.

For R. S. sec. 2301, mentioned in the text, see 6 Fed. Stat. Ann. 317; 8 Fed. Stat. Ann. (2d ed.) 583.

SEC. 6. [Purchasers of timber — liability for commission — compensation of register and receiver.] That persons who purchase timber on lands of class two shall be required to pay a commission of one-fifth of one per centum of the purchase price paid, to be divided equally between the register and receiver, within the maximum compensation allowed them by law; and the register and receiver shall receive no other compensation whatever for services rendered in connection with the sales of timber under the provisions of section four of this Act. [39 Stat. L. 221.]

SEC. 7. [Suits against railroad — recovery of moneys received on account of lands — taxes.] That the Attorney General of the United States be, and he is hereby, authorized and directed to institute and prosecute any and all suits in equity and actions at law against the Oregon and California Railroad Company, and any other proper party which he may deem appropriate, to have determined the amount of moneys which have been received by the said railroad company or its predecessors from or on account of any of said granted lands, whether sold or unsold, patented or unpatented, and which should be charged against it as a part of the "full value" secured to the grantees under said granting Acts as heretofore interpreted by the Supreme Court. In making this determination the court shall take into consideration and give due and proper legal effect to all receipts of money from sales of land or timber,

forfeited contracts, rent, timber depredations, and interest on contracts, or from any other source relating to said lands; also to the value of timber taken from said lands and used by said grantees or their successor or successors. In making this determination in the aforementioned suit or suits the court shall also determine, on the application of the Attorney General, the amount of the taxes on said lands paid by the United States, as provided in this Act, and which should in law have been paid by the said Oregon and California Railroad Company, and the amount thus determined shall be treated as money received by said railroad company. [39 Stat. L. 221.]

SEC. 8. [Title to moneys on deposit to await outcome of suit — subrogation.] That the title to all money arising out of said grant lands and now on deposit to await the final outcome of said suit commenced by the United States in pursuance of said joint resolution of nineteen hundred and eight is hereby vested in the United States, and the United States is subrogated to all the rights and remedies of the obligee or obligees, and especially of Louis L. Sharp as commissioner, under any contract for the purchase of timber on the grant lands. [39 Stat. L. 221.]

SEC. 9. [Taxes — payment by government.] That the taxes accrued and now unpaid on the lands revested in the United States, whether situate in the State of Oregon or State of Washington, shall be paid by the Treasurer of the United States, upon the order of the Secretary of the Interior, as soon as may be after the approval of this Act, and a sum sufficient to make such payment is hereby appropriated, out of any money in the Treasury not otherwise appropriated. [39 Stat. L. 221.]

SEC. 10. [Moneys received for lands and timber — special fund — liens — payments from fund.] That all moneys received from or on account of said lands and timber under the provisions of this Act shall be deposited in the Treasury of the United States in a special fund, to be designated "The Oregon and California land-grant fund," which fund shall be disposed of in the following manner: The Secretary of the Interior shall ascertain as soon as may be the exact number of acres of said lands, sold or unsold, patented to the Oregon and California Railroad Company, or its predecessors, and the number of acres of unpatented lands which said railroad company is entitled to receive under the terms of said grants and the value of said lands at \$2.50 per acre. From the sum thus ascertained he shall deduct the amount already received by the said railroad company and its predecessors in interest on account of said lands and which should be charged against it as determined under section seven of this Act; and a sum equal to the balance thus resulting shall be paid, as herein provided, to the said railroad company, its successors or assigns, and to those having liens on the land, as their respective interests may appear. The amount due lien holders shall be evidenced either by the consent, in writing, of the railroad company or by a judgment of a court of competent jurisdiction in a suit to which the railroad company

and the lien holders are parties. Payments shall be made from time to time, as the fund accumulates, by the Treasurer of the United States upon the order of the Secretary of the Interior: *Provided, however*, That if, upon the expiration of ten years from the approval of this Act, the proceeds derived from the sale of lands and timber are not sufficient to pay the full amount which the said railroad company, its successors or assigns, are entitled to receive, the balance due shall be paid from the general funds in the Treasury of the United States, and an appropriation shall be made therefor. After the said railroad company, its successors or assigns, and the lien holders shall have been paid the amount to which they are entitled, as provided herein, an amount equal to that paid for accumulated taxes, as provided in section nine hereof, shall be deposited in the Treasury to the credit of the United States, thereafter all other moneys received from the sales of land and timber shall be distributed as follows:

A separate account shall be kept in the General Land Office of the sales of land and timber within each county in which any of said lands are situated, and, after deducting from the amount of the proceeds arising from such sales in each county a sum equal to that applied to pay the accrued taxes in that county and a sum equal to \$2.50 per acre for each acre of such land therein title to which is revested in the United States under this Act, twenty-five per centum of the remainder shall be paid to the State treasurer of the State in which the land is located, to be and become a part of the irreducible school fund of the State; twenty-five per centum shall be paid to the treasurer of the county for common schools, roads, highways, bridges, and port districts, to be apportioned by the county courts for the several purposes above named; forty per centum shall be paid into, reserved, and appropriated as a part of the fund created by the Act of Congress approved June seventeenth, nineteen hundred and two, known as the reclamation Act; ten per centum shall become a part of the general fund in the Treasury of the United States; and of the balance remaining in said Oregon and California land grant fund from whatsoever source derived twenty-five per centum shall be paid to the State treasurer of the State in which the land is located, to be and become a part of the irreducible school fund of the State; twenty-five per centum shall be paid to the treasurer of the county for common schools, roads, highways, bridges, and port districts, to be apportioned by the county courts for the several purposes above named; and the remainder shall become a part of the general fund in the Treasury of the United States. The payments herein authorized shall be made to the treasurers of the States and counties, respectively, by the Treasurer of the United States, upon the order of the Secretary of the Interior, as soon as may be after the close of each fiscal year during which the moneys were received: *Provided*, That none of the payments to the States and counties and to the reclamation fund in this section provided for shall be made until the amount due the Oregon and California Railroad Company, its successors or assigns, has been fully paid, and the Treasury reimbursed for all taxes paid pursuant to the provisions of section nine of this Act. [39 Stat. L. 222.]

For the Reclamation Act of June 17, 1902, ch. 1093, mentioned in this section, see 7 Fed. Stat. Ann. 1098; 9 Fed. Stat. Ann. (2d ed.) 1363.

SEC. 11. [Authority of Secretary of Interior — rules and regulations — perjury.] That the Secretary of the Interior is hereby authorized to perform any and all acts and to make such rules and regulations as may be necessary and proper for the purpose of carrying the provisions of this Act into full force and effect; and any person, applicant, purchaser, entryman, or witness who shall swear falsely in any affidavit or proceeding required hereunder or under the regulations issued by the Secretary of the Interior shall be guilty of perjury and liable to the penalties prescribed therefor. [39 Stat. L. 223.]

SEC. 12. [Appropriation to defray expense of classification.] That the sum of \$100,000 be, and the same is hereby, appropriated, out of any moneys in the Treasury not otherwise appropriated, to enable the Secretary of the Interior, in cooperation with the Secretary of Agriculture, or otherwise, to complete the classification of the lands as herein provided, which amount shall be immediately available and shall remain available until such classification shall have been completed. [39 Stat. L. 223.]

An Act To amend the Act of June twenty-third, nineteen hundred and ten, entitled "An Act providing that entrymen for homesteads within the reclamation projects may assign their entries upon satisfactory proof of residence, improvement, and cultivation for five years, the same as though said entry had been made under the original homestead Act."

[Act of May 8, 1916, ch. 114, 39 Stat. L. 65.]

[Homestead entries in reclamation projects — assignments — former Act amended.] That the Act of June twenty-third, nineteen hundred and ten (Public, Two hundred and forty-three, Thirty-sixth Statutes, page five hundred and ninety-two), entitled "An Act providing that entrymen for homesteads within reclamation projects may assign their entries upon satisfactory proof of residence, improvement, and cultivation for five years, the same as though said entry had been made under the original homestead Act," is hereby amended by adding the following proviso:

"Provided, That in the absence of any intervening valid adverse interests any assignment made between June twenty-third, nineteen hundred and ten, and January first, nineteen hundred and thirteen, of land upon which the assignor has submitted satisfactory final proof and the assignee purchased with the belief that the assignment was valid and under the Act of June twenty-third, nineteen hundred and ten, is hereby confirmed, and the assignee shall be entitled to the land assigned as under the Act of June twenty-third, nineteen hundred and ten, notwithstanding that said original entry was conformed to farm units and that the part assigned was canceled and eliminated from said entry prior to the date of final proof: Provided further, That all entries so assigned shall be subject to the limitations, terms, and conditions of the reclamation Act and Acts amendatory thereof or supplemental thereto, and all of said assignees whose entries are hereby

confirmed shall, as a condition to receiving patent, make the proof heretofore required of assignees." [39 Stat. L. 65.]

For the Act of June 23, 1910, ch. 357, amended by this Act, see 1912 Supp. Fed. Stat. Ann. 319; 9 Fed. Stat. Ann. (2d ed.) 1376.

[SEC. 1.] [Colorado—grant of land for educational purposes—change of use—Indians.] * * * That the lands, buildings, fixtures, and all property rights granted to the State of Colorado for educational purposes by section five of the Act of Congress approved April fourth, nineteen hundred and ten (Thirty-sixth Statutes at Large, page two hundred and seventy-three), may, in lieu of the use designated in said grant, be utilized by said State for the care of the insane, as an agricultural experiment station, or for such other public purposes as may be authorized by the legislature of the State: *Provided*, That Indians shall always be admitted to such institutions free of charge and upon an equality with white persons. [39 Stat. L. 128.]

This is from the Indian Appropriation Act of May 18, 1916, ch. 125.

The Act mentioned in the text is the Indian Appropriation Act of April 4, 1910, ch. 140, § 5, 36 Stat. L. 273.

An Act Creating an additional land district in the State of California, and for other purposes.

[Act of June 15, 1916, ch. 147, 39 Stat. L. 226.]

[SEC. 1.] [Additional land district—California.] That an additional land district is hereby created for the State of California, to embrace the lands contained in the following-described boundaries: Beginning at the intersection of the range line between ranges five and six east of the San Bernardino meridian with the southern boundary of California; thence north along the range line, between ranges five and six east, to the northwest corner of township nine south, range six east; thence east along the second standard parallel south to the southwest corner of township eight south, range seven east; thence north along the range line, between ranges six and seven east, to the northwest corner of township two south, range seven east; thence east along the township line between townships one and two south to its intersection with the Colorado River; thence southerly along the Colorado River to its intersection with the south boundary of California; thence southwesterly along the southern boundary of California to its intersection with the range line between ranges five and six east, to the place of beginning; that the land district shall be known as the Imperial district, and the Secretary of the Interior shall be authorized to select the site of the land office. [39 Stat. L. 226.]

SEC. 2. [Transfer of records.] That the Secretary of the Interior shall cause all plats, maps, records, and papers in the Los Angeles land office which relate to or form a necessary part of the records of the lands

embraced in the district hereby created to be transferred to the Imperial land district. [39 Stat. L. 227.]

SEC. 3. [Register and receiver.] That the President is hereby authorized to appoint, by and with the advice and consent of the Senate, a register and receiver for said land district, and they shall be subject to the same laws and entitled to the same compensation as is or may be hereafter provided by law in relation to the existing land offices and officers in said State. [39 Stat. L. 227.]

An Act Authorizing leave of absence to homestead settlers upon unsurveyed lands.

[Act of July 3, 1916, ch. 214, 39 Stat. L. 341.]

[Homestead settlers—leave of absence—unsurveyed lands.] That any qualified person who has heretofore or shall hereafter in good faith make settlement upon and improve unsurveyed unreserved unappropriated public lands of the United States with intention, upon survey, of entering same under the homestead laws shall be entitled to a leave of absence in one or two periods not exceeding in the aggregate five months in each year after establishment of residence: *Provided*, That he shall have plainly marked on the ground the exterior boundaries of the lands claimed and have filed in the local land office notice of the approximate location of the lands settled upon and claimed, of the period of intended absence, and that he shall upon the termination of the absence and his return to the land file notice thereof in the local land office. [39 Stat. L. 341.]

An Act To amend an Act entitled "An Act to provide for an enlarged homestead," approved February nineteenth, nineteen hundred and nine, by adding a new section to be known as section seven.

[Act of July 3, 1916, ch. 220, 39 Stat. L. 344.]

[Enlarged homesteads—additional entry—former Act amended.] That the Act entitled "An Act to provide for an enlarged homestead," approved February nineteenth, nineteen hundred and nine, be amended by adding thereto an additional section to be known as section seven:

"SEC. 7. That any person who has made or shall make homestead entry of less than three hundred and twenty acres of lands of the character herein described, and who shall have submitted final proof thereon, shall have the right to enter public lands subject to the provisions of this Act, not contiguous to his first entry, which shall not with the original entry exceed three hundred and twenty acres: *Provided*, That the land originally entered and that covered by the additional entry shall first have been designated as subject to this Act as provided by section one thereof: *Provided further*, That in no case shall patent issue for the land covered by such additional entry until the person making same shall have actually and in

conformity with the homestead laws resided upon and cultivated the lands so additionally entered, and otherwise complied with such laws, except that where the land embraced in the additional entry is located not exceeding twenty miles from the land embraced in the original entry no residence shall be required on such additional entry if the entryman is residing on his former entry: *And provided further*, That this section shall not be construed as affecting any rights as to location of soldiers' additional homesteads under section twenty-three hundred and six of the Revised Statutes." [39 Stat. L. 344.]

For the Act of Feb. 19, 1909, ch. 160, amended by this Act, see 1909 Supp. Fed. Stat. Ann. 560; 8 Fed. Stat. Ann. (2d ed.) 613.

For R. S. sec. 2306, mentioned in the text, see 6 Fed. Stat. Ann. 324; 8 Fed. Stat. Ann. (2d ed.) 588.

An Act Providing for the discovery, development, and protection of streams, springs, and water holes in the desert and arid public lands of the United States, for rendering the same more readily accessible, and for the establishment of and maintenance of signboards and monuments locating the same.

[Act of Aug. 21, 1916, ch. 360, 39 Stat. L. 518.]

[SEC. 1.] [Arid public lands — discovery, etc., of water — monuments and signboards.] That the Secretary of the Interior be, and he is hereby, authorized and empowered, in his discretion in so far as the authorization made herein will permit, to discover, develop, protect, and render more accessible for the benefit of the general public, springs, streams, and water holes on arid public lands of the United States; and in connection therewith to erect and maintain suitable and durable monuments and signboards at proper places and intervals along and near the accustomed lines of travel and over the general area of said desert lands, containing information and directions as to the location and nature of said springs, streams, and water holes, to the end that the same may be more readily traced and found by persons in search or need thereof; also to provide convenient and ready means, apparatus, and appliances by which water may be brought to the earth's surface at said water holes for the use of such persons; also to prepare and distribute suitable maps, reports, and general information relating to said springs, streams, and water holes, and their specific location with reference to lines of travel. [39 Stat. L. 518.]

SEC. 2. [Appropriation.] That to carry out the purposes of this Act the expenditure of \$10,000, or so much thereof as may be necessary, is hereby authorized. [39 Stat. L. 518.]

SEC. 3. [Wilful injury, etc., of monuments — impairment of water supply — penalty.] That whoever shall wilfully or maliciously injure, destroy, deface, or remove any of said monuments or signposts, or shall wilfully or maliciously fill up, render foul, or in anywise destroy or impair the utility of said springs, streams, or water holes, or shall wilfully or maliciously interfere with said monuments, signposts, streams, springs, or

water holes, or the purposes for which they are maintained and used, shall be fined not more than \$1,000 or imprisoned not more than three years, or both. [39 Stat. L. 518.]

SEC. 4. [Rules and regulations.] That the Secretary of the Interior is hereby authorized to perform any and all acts and make such rules and regulations as may be necessary for the purpose of carrying the provisions of this Act into full force and effect. [39 Stat. L. 518.]

An Act To open abandoned military reservations in the State of Nevada to homestead entry and desert-land entry, and to amend an Act entitled "An Act to open abandoned military reservations in the State of Nevada to homestead entry," approved October first, eighteen hundred and ninety.

[Act of Aug. 21, 1916, ch. 361, 39 Stat. L. 518.]

[Abandoned military reservations in Nevada — disposition under homestead, etc., laws.] That all the agricultural lands embraced within the military reservations in the State of Nevada which have been placed under the control of the Secretary of the Interior for disposition be disposed of under the homestead and desert-land laws, and not otherwise: *Provided*, That this Act is intended to make applicable to the desert-land laws only such lands as were included under the Act of March third, eighteen hundred and seventy-seven, providing for the disposition of public lands under the desert-land laws. [39 Stat. L. 516.]

For the Act of Oct. 1, 1890, ch. 1239, mentioned in the title of this Act, see 6 Fed. Stat. Ann. 427; 8 Fed. Stat. Ann. (2d ed.) 833.

For the Act of March 3, 1877, ch. 107, mentioned in the text of this Act, see 6 Fed. Stat. Ann. 392; 8 Fed. Stat. Ann. (2d ed.) 692.

Joint Resolution Extending the provisions of the Act approved June sixteenth, eighteen hundred and ninety-eight.

[Res. of Aug. 29, 1916, ch. 420, 39 Stat. L. 671.]

[Homestead settlers — service in army, etc. — effect on residence.] That the provisions of the Act approved June sixteenth, eighteen hundred and ninety-eight, chapter four hundred and fifty-eight (Thirtieth Statutes at Large, page four hundred and seventy-three), shall be applicable in all cases of military service rendered in connection with operations in Mexico, or along the borders thereof, or in mobilization camps elsewhere, whether such service be in the military or naval organization of the United States or the National Guard of the several States now or hereafter in the service of the United States. [39 Stat. L. 671.]

For the Act of June 16, 1898, ch. 458, see 6 Fed. Stat. Ann. 324; 8 Fed. Stat. Ann. (2d ed.) 608.

An Act To amend sections five and six of an Act entitled "An Act to authorize the drainage of certain lands in the State of Minnesota," approved May twentieth, nineteen hundred and eight.

[*Act of Sept. 5, 1916, ch. 437, 39 Stat. L. 722.*]

[Public lands in Minnesota—drainage—patents to purchasers—time—delay in payments—subrogation—former Act amended.] That section five of the Act entitled "An Act to authorize the drainage of certain lands in the State of Minnesota," approved May twentieth, nineteen hundred and eight, be, and the same is hereby, amended so as to read as follows:

"SEC. 5. That at any time after any sale of unentered lands has been made in the manner and for the purposes mentioned in this Act patent shall issue to the purchaser thereof upon payment to the receiver of the minimum price of \$1.25 per acre, or such other price as may have been fixed by law for such lands, together with the usual fees and commissions charged in entry of like lands under the homestead laws. But purchasers at a sale of unentered lands shall have the qualification of homestead entrymen, and not more than one hundred and sixty acres of such lands shall be sold to any one purchaser under the provisions of this Act. This limitation shall not apply to sales to the State, but shall apply to purchases from the State of unentered land bid in for the State. Any part of the purchase money arising from the sale of any lands in the manner and for the purposes provided in this Act which shall be in excess of the drainage charges then delinquent shall be paid to and used by the county in which such land is located for the purpose of maintenance, improving, and extending such drainage works within the area benefited by the drainage project in which such land shall have been assessed for such drainage charge."

That section six of said Act be, and the same is hereby, amended so as to read as follows:

"SEC. 6. That any entered lands sold in the manner and for the purposes mentioned in this Act may be patented to the purchaser thereof at any time after the expiration of the period of redemption provided for in the drainage laws under which it may be sold (there having been no redemption) upon the payment to the receiver of the fees and commissions and the price mentioned in the preceding section, or so much thereof as has not already been paid by the entryman; and if the sum received at any such sale shall be in excess of the payments herein required and of the drainage assessments and costs of the sale, such excess shall be paid to the proper county officer for the benefit of and payment to the entryman. That unless the purchasers of unentered lands shall, within ninety days after the sale provided for in section three, pay to the proper receiver the fees, commissions, and purchase price to which the United States may be entitled, as provided in section five, and unless the purchasers of entered lands shall, within ninety days after the right of redemption has expired, make like payments, as provided for in this section, any person having the qualifications of a homestead entryman may pay to the proper receiver for not more than one hundred and sixty acres of land for which such payment has not been made: First, the unpaid fees, commissions, and purchase price to which the United States may then be entitled; and second, the sum due at the sale

for drainage charges; and, in addition thereto, if bid in by the State, interest on the amount bid by the State at the rate of seven per centum per annum from the date of such sale, and thereupon the person making such payment shall become subrogated to the right of such purchaser to receive a patent for said land. When any payment is made to effect such subrogation the receiver shall transmit to the treasurer of the county where the land is situated the amount paid for drainage charges, together with the interest paid thereon." [39 Stat. L. 722.]

For the Act of May 20, 1908, ch. 181, amended by this Act, see 1909 Supp. Fed. Stat. Ann. 551; 8 Fed. Stat. Ann. (2d ed.) 729.

An Act To amend an Act entitled "An Act to provide for an enlarged homestead," approved June seventeenth nineteen hundred and ten.

[Act of Sept. 5, 1916, ch. 440, 39 Stat. L. 724.]

[Enlarged homesteads in Idaho — former Act amended.] That the Act entitled "An Act to provide for an enlarged homestead," approved June seventeenth, nineteen hundred and ten, be amended by adding thereto an additional section to be known as section seven:

"Sec. 7. That any person who has made or shall make homestead entry of less than three hundred and twenty acres of lands of the character herein described, and who shall have submitted final proof thereon, shall have the right to enter public lands subject to the provisions of this Act, not contiguous to his first entry, which shall not with the original entry exceed three hundred and twenty acres: *Provided*, That the land originally entered and that covered by the additional entry shall first have been designated as subject to this Act or the Act of February nineteenth, nineteen hundred and nine (Thirty-fifth Statutes, page six hundred and thirty-nine), as provided by sections one of said Acts: *Provided further*, That in no case shall patent issue for the land covered by such additional entry until the person making same shall have actually and in conformity with the homestead laws resided upon and cultivated the lands so additionally entered, and otherwise complied with such laws, except that where the land embraced in the additional entry is located not exceeding twenty miles from the land embraced in the original entry no residence shall be required on such additional entry if the entryman is residing on his former entry: *And provided further*, That this section shall not be construed as affecting any rights as to location of soldiers' additional homesteads under section twenty-three hundred and six of the Revised Statutes." [39 Stat. L. 724.]

For the Act of June 17, 1910, ch. 298, amended by this Act, see 1912 Supp. Fed. Stat. Ann. 316; 8 Fed. Stat. Ann. (2d ed.) 616.

For the Act of Feb. 19, 1909, ch. 160, mentioned in the text, see 1909 Supp. Fed. Stat. Ann. 560; 8 Fed. Stat. Ann. (2d ed.) 613.

For R. S. sec. 2306, mentioned in the text, see 6 Fed. Stat. Ann. 324; 8 Fed. Stat. Ann. (2d ed.) 588.

An Act To provide for stock-raising homesteads, and for other purposes.

[Act of Dec. 29, 1916, ch. 9, 39 Stat. L. 862.]

[SEC. 1.] **[Stock-raising homesteads — entry — unappropriated unreserved public land.]** That from and after the passage of this Act it shall be lawful for any person qualified to make entry under the homestead laws of the United States to make a stock-raising homestead entry for not exceeding six hundred and forty acres of unappropriated unreserved public land in reasonably compact form: *Provided, however,* That the land so entered shall theretofore have been designated by the Secretary of the Interior as "stock-raising lands." [39 Stat. L. 862.]

SEC. 2. **[Designation of stock-raising lands — application — disposition.]** That the Secretary of the Interior is hereby authorized, on application or otherwise, to designate as stock-raising lands subject to entry under this Act lands the surface of which is, in his opinion, chiefly valuable for grazing and raising forage crops, do not contain merchantable timber, are not susceptible of irrigation from any known source of water supply, and are of such character that six hundred and forty acres are reasonably required for the support of a family: *Provided,* That where any person qualified to make original or additional entry under the provisions of this Act shall make application to enter any unappropriated public land which has not been designated as subject to entry (provided said application is accompanied and supported by properly corroborated affidavit of the applicant, in duplicate, showing prima facie that the land applied for is of the character contemplated by this Act), such application, together with the regular fees and commissions, shall be received by the register and receiver of the land district in which said land is located and suspended until it shall have been determined by the Secretary of the Interior whether said land is actually of that character. That during such suspension the land described in the application shall not be disposed of; and if the said land shall be designated under this Act, then such application shall be allowed; otherwise it shall be rejected, subject to appeal; but no right to occupy such lands shall be acquired by reason of said application until said lands have been designated as stock-raising lands. [39 Stat. L. 862.]

SEC. 3. **[Entry — who may make — amount of land — location — additional entry — improvements.]** That any qualified homestead entryman may make entry under the homestead laws of lands so designated by the Secretary of the Interior, according to legal subdivisions, in areas not exceeding six hundred and forty acres and in compact form so far as may be subject to the provisions of this Act, and secure title thereto by compliance with the terms of the homestead laws: *Provided,* That a former homestead entry of land of the character described in section two hereof shall not be a bar to the entry of a tract within a radius of twenty miles from such former entry under the provisions of this Act, subject to the requirements of law as to residence and improvements, which, together with the former entry, shall not exceed six hundred and forty acres: *Provided further,* That the entryman shall be required to enter all contiguous areas of the character herein described open to entry prior to the entry of

any noncontiguous land: *Provided further*, That instead of cultivation as required by the homestead laws the entryman shall be required to make permanent improvements upon the land entered before final proof is submitted tending to increase the value of the same for stock-raising purposes, of the value of not less than \$1.25 per acre, and at least one-half of such improvements shall be placed upon the land within three years after the date of entry thereof. [39 Stat. L. 863.]

SEC. 4. [Additional entry — contiguous land — amount of land — residence — improvements.] That any homestead entryman of lands of the character herein described, who has not submitted final proof upon his existing entry shall have the right to enter, subject to the provisions of this Act, such amount of contiguous lands designated for entry under the provisions of this Act as shall not, together with the amount embraced in his original entry, exceed six hundred and forty acres, and residence upon the original entry shall be credited on both entries, but improvements must be made on the additional entry equal to \$1.25 for each acre thereof. [39 Stat. L. 863.]

SEC. 5. [Additional entry — contiguous land — amount of land — proof.] That persons who have submitted final proof upon, or received patent for, lands of the character herein described under the homestead laws, and who own and reside upon the land so acquired, may, subject to the provisions of this Act, make additional entry for and obtain patent to contiguous lands designated for entry under the provisions of this Act, which, together with the area theretofore acquired under the homestead law, shall not exceed six hundred and forty acres, on proof of the expenditure required by this Act on account of permanent improvements upon the additional entry. [39 Stat. L. 863.]

SEC. 6. [Original entry — relinquishment of lands under — new entry in lieu.] That any person who is the head of a family, or who has arrived at the age of twenty-one years and is a citizen of the United States, who has entered or acquired under the homestead laws, prior to the passage of this Act, lands of the character described in this Act, the area of which is less than six hundred and forty acres, and who is unable to exercise the right of additional entry herein conferred because no lands subject to entry under this Act adjoin the tract so entered or acquired or lie within the twenty mile limit provided for in this Act, may, upon submitting proof that he resides upon and has not sold the land so entered or acquired and against which land there are no encumbrances, relinquish or reconvey to the United States the land so occupied, entered, or acquired, and in lieu thereof, within the same land-office district, may enter and acquire title to six hundred and forty acres of the land subject to entry under this Act, but must show compliance with all the provisions of this Act respecting the new entry and with all the provisions of existing homestead laws except as modified herein. [39 Stat. L. 863.]

SEC. 7. [Homestead laws — commutation provisions.] That the commutation provisions of the homestead laws shall not apply to any entries made under this Act. [39 Stat. L. 864.]

SEC. 8. [Additional entry — right when exercised — conflicting claims — equitable division.] That any homestead entryman or patentees who shall be entitled to additional entry under this Act shall have, for ninety days after the designation of lands subject to entry under the provisions of this Act and contiguous to those entered or owned and occupied by him, the preferential right to make additional entry as provided in this Act: *Provided*, That where such lands contiguous to the lands of two or more entrymen or patentees entitled to additional entries under this section are not sufficient in area to enable such entrymen to secure by additional entry the maximum amounts to which they are entitled, the Secretary of the Interior is authorized to make an equitable division of the lands among the several entrymen or patentees, applying to exercise preferential rights, such division to be in tracts of not less than forty acres, or other legal subdivision, and so made as to equalize as nearly as possible the area which such entrymen and patentees will acquire by adding the tracts embraced in additional entries to the lands originally held or owned by them: *Provided further*, That where but one such tract of vacant land may adjoin the lands of two or more entrymen or patentees entitled to exercise preferential right hereunder, the tract in question may be entered by the person who first submits to the local land office his application to exercise said preferential right. [39 Stat. L. 864.]

SEC. 9. [Coal and other mineral deposits — reservation — mining — damages.] That all entries made and patents issued under the provisions of this Act shall be subject to and contain a reservation to the United States of all the coal and other minerals in the lands so entered and patented, together with the right to prospect for, mine, and remove the same. The coal and other mineral deposits in such lands shall be subject to disposal by the United States in accordance with the provisions of the coal and mineral land laws in force at the time of such disposal. Any person qualified to locate and enter the coal or other mineral deposits, or having the right to mine and remove the same under the laws of the United States, shall have the right at all times to enter upon the lands entered or patented, as provided by this Act, for the purpose of prospecting for coal or other mineral therein, provided he shall not injure, damage, or destroy the permanent improvements of the entryman or patentee; and shall be liable to and shall compensate the entryman or patentee for all damages to the crops on such lands by reason of such prospecting. Any person who has acquired from the United States the coal or other mineral deposits in any such land, or the right to mine and remove the same, may reenter and occupy so much of the surface thereof as may be required for all purposes reasonably incident to the mining or removal of the coal or other minerals, first, upon securing the written consent or waiver of the homestead entryman or patentee; second, upon payment of the damages to crops or other tangible improvements to the owner thereof, where agreement may be had as to the amount thereof; or, third, in lieu of either of the foregoing provisions, upon the execution of a good and sufficient bond or undertaking to the United States for the use and benefit of the entryman or owner of the land, to secure the payment of such damages to the crops or tangible improvements of the entryman or owner, as may be determined and fixed in an action

brought upon the bond or undertaking in a court of competent jurisdiction against the principal and sureties thereon, such bond or undertaking to be in form and in accordance with rules and regulations prescribed by the Secretary of the Interior and to be filed with and approved by the register and receiver of the local land office of the district wherein the land is situate, subject to appeal to the Commissioner of the General Land Office: *Provided*, That all patents issued for the coal or other mineral deposits herein reserved shall contain appropriate notations declaring them to be subject to the provisions of this Act with reference to the disposition, occupancy, and use of the land as permitted to an entryman under this Act. [39 Stat. L. 864.]

SEC. 10. [Water-holes — reservation — access.] That lands containing water-holes or other bodies of water needed or used by the public for watering purposes shall not be designated under this Act but may be reserved under the provisions of the Act of June twenty-fifth, nineteen hundred and ten, and such lands heretofore or hereafter reserved shall, while so reserved, be kept and held open to the public use for such purposes under such general rules and regulations as the Secretary of the Interior may prescribe: *Provided*, That the Secretary may, in his discretion, also withdraw from entry lands necessary to insure access by the public to watering places reserved hereunder and needed for use in the movement of stock to summer and winter ranges or to shipping points, and may prescribe such rules and regulations as may be necessary for the proper administration and use of such lands: *Provided further*, That such driveways shall not be of greater number or width than shall be clearly necessary for the purpose proposed and in no event shall be more than one mile in width for a driveway less than twenty miles in length, not more than two miles in width for driveways over twenty and not more than thirty-five miles in length and not over five miles in width for driveways over thirty-five miles in length: *Provided further*, That all stock so transported over such driveways shall be moved an average of not less than three miles per day for sheep and goats and an average of not less than six miles per day for cattle and horses. [39 Stat. L. 865.]

For the Act of June 25, 1910, ch. 421, mentioned in this section, see 1912 Supp. Fed. Stat. Ann. 321; 8 Fed. Stat. Ann. (2d ed.) 657.

SEC. 11. [Rules and regulations — authorization.] That the Secretary of the Interior is hereby authorized to make all necessary rules and regulations in harmony with the provisions and purposes of this Act for the purpose of carrying the same into effect. [39 Stat. L. 865.]

An Act To allow additional entries under the enlarged homestead Act.

[Act of Feb. 20, 1917, ch. 98, 39 Stat. L. 925.]

[Enlarged homestead — additional entries.] That any person otherwise qualified who has obtained title under the homestead laws to less than one-quarter section of land may make entry and obtain title under the provisions of the Act entitled "An Act to provide for enlarged homesteads,"

approved February nineteenth, nineteen hundred and nine, and an Act of June seventeenth, nineteen hundred and ten, entitled "An Act to provide for an enlarged homestead," for such an area of public land as will, when one-half of such area is added to the area of the lands to which he has already obtained title, not exceed one-quarter section: *Provided*, That this Act shall not be construed to apply to soldiers' additional homestead entries made under section twenty-three hundred and six, United States Revised Statutes, or Acts amendatory thereof or supplemental thereto. [39 Stat. L. 925.]

For the Act of Feb. 19, 1909, ch. 160, mentioned in this Act, see 1909 Supp. Fed. Stat. Ann. 560; 8 Fed. Stat. Ann. (2d ed.) 613.

For the Act of June 17, 1910, ch. 298, mentioned in the text, see 1912 Supp. Fed. Stat. Ann. 316; 8 Fed. Stat. Ann. (2d ed.) 616.

For R. S. sec. 2306, mentioned in the text, see 6 Fed. Stat. Ann. 324; 8 Fed. Stat. Ann. (2d ed.) 588.

An Act To restore homestead rights in certain cases.

[Act of Feb. 20, 1917, ch. 101, 39 Stat. L. 926.]

[Homestead — restoration of rights.] That from and after the passage of this Act any person who has heretofore entered under the homestead laws, and paid a price equivalent to or greater than \$4 per acre, lands embraced in a ceded Indian reservation, shall, upon proof of such fact, if otherwise qualified, be entitled to the benefits of the homestead law as though such former entry had not been made: *Provided*, That the provisions of this Act shall not apply to any person who has failed to pay the full price for his former entry, or whose former entry was canceled for fraud. [39 Stat. L. 926.]

An Act To punish persons who make false representations to settlers and others pertaining to the public lands of the United States.

[Act of Feb. 23, 1917, ch. 115, 39 Stat. L. 936.]

[False representations made to settlers and others — punishment.] That any person who, for a reward paid or promised to him in that behalf, shall undertake to locate for an intending purchaser, settler, or entryman any public lands of the United States subject to disposition under the public-land laws, and who shall willfully and falsely represent to such intending purchaser, settler, or entryman that any tract of land shown to him is public land of the United States subject to sale, settlement, or entry, or that it is of a particular surveyed description, with intent to deceive the person to whom such representation is made, or who, in reckless disregard of the truth, shall falsely represent to any such person that any tract of land shown to him is public land of the United States subject to sale, settlement, or entry, or that it is of a particular surveyed description, thereby deceiving the person to whom such representation is made, shall be

deemed guilty of a misdemeanor and shall be punished by a fine of not exceeding \$300 or by imprisonment for a term not exceeding one year, or by both such fine and imprisonment. [39 Stat. L. 936.]

An Act Relating to desert-land entries.

[Act of Feb. 27, 1917, ch. 134, 39 Stat. L. 946.]

[Enlarged homestead entry — desert-land entry.] That the right to make a desert-land entry shall not be denied to any applicant therefor who has already made an enlarged homestead entry of three hundred and twenty acres: *Provided*, That said applicant is a duly qualified entryman and the whole area to be acquired as an enlarged homestead entry and under the provisions of this Act does not exceed four hundred and eighty acres. [39 Stat. L. 946.]

An Act To amend the irrigation Act of March third, eighteen hundred and ninety-one (Twenty-sixth Statutes, page one thousand and ninety-five), section eighteen, and to amend section two of the Act of May eleventh, eighteen hundred and ninety-eight (Thirtieth Statutes, page four hundred and four).

[Act of March 4, 1917, ch. 184, 39 Stat. L. 1197.]

[Sec. 1.] [Rights of way — grant for irrigation or drainage — former Act amended.] That section eighteen of what is generally known as the irrigation Act of March third, eighteen hundred and ninety-one (Twenty-sixth Statutes, page one thousand and ninety-five), be, and is hereby, amended so as to read as follows:

“Sec. 18. That the right of way through the public lands and reservations of the United States is hereby granted to any canal or ditch company or drainage district formed for the purpose of irrigation or drainage and duly organized under the laws of any State or Territory, and which shall have filed or may hereafter file with the Secretary of the Interior a copy of its articles of incorporation and due proofs of its organization under the same, to the extent of the ground occupied by the water of the reservoir and of the canal and its laterals, and fifty feet on each side of the marginal limits thereof; also the right to take from the public lands adjacent to the line of the canal or ditch, material, earth, and stone necessary for the construction of such canal or ditch: *Provided*, That no such right of way shall be so located as to interfere with the proper occupation by the Government of any such reservation, and all maps of location shall be subject to the approval of the department of the Government having jurisdiction of such reservation; and the privilege herein granted shall not be construed to interfere with the control of water for irrigation and other purposes under authority of the respective States or Territories.” [39 Stat. L. 1197.]

For the Act of March 3, 1891, ch. 561, § 18, amended by this section, see 6 Fed. Stat. Ann. 508; 8 Fed. Stat. Ann. (2d ed.) 803.

SEC. 2. [Rights of way for ditches, etc.—use for what purposes—former Act amended.] That section two of the Act of May eleventh, eighteen hundred and ninety-eight (Thirtieth Statutes, page four hundred and four), be, and is hereby, amended so as to read as follows:

“**SEC. 2.** That rights of way for ditches, canals, or reservoirs, heretofore or hereafter approved under the provisions of sections eighteen, nineteen, twenty, and twenty-one of the Act entitled ‘An Act to repeal timber-culture laws, and for other purposes,’ approved March third, eighteen hundred and ninety-one, may be used for purposes of a public nature; and said rights of way may be used for purposes of water transportation, for domestic purposes, or for the development of power, as subsidiary to the main purpose of irrigation or drainage.” [39 Stat. L. 1197.]

For the Act of May 11, 1898, ch. 292, § 2, amended by this section, see 6 Fed. Stat. Ann. 512; 8 Fed. Stat. Ann. (2d ed.) 810.

For the Act of March 3, 1891, ch. 561, §§ 18, 19, 20, mentioned in this section, see 6 Fed. Stat. Ann. 508-510; 8 Fed. Stat. Ann. (2d ed.) 803 *et seq.*

An Act For the relief of homestead entrymen or settlers who enter the military or naval service of the United States in time of war.

[Act of July 28, 1917, ch. —, — Stat. L. —.]

[SEC. 1.] [Homesteads—settlers or entrymen—military or naval service—effect.] That any settler upon the public lands of the United States; or any entryman whose application has been allowed; or any person who has made application for public lands which thereafter may be allowed under the homestead laws, who, after such settlement, entry, or application, enlists or is actually engaged in the military or naval service of the United States as a private soldier, officer, seaman, marine, national guardsman, or member of any other organization for offense or defense authorized by Congress during any war in which the United States may be engaged, shall, in the administration of the homestead laws, have his services therein construed to be equivalent to all intents and purposes to residence and cultivation for the same length of time upon the tract entered or settled upon; and hereafter no contest shall be initiated on the ground of abandonment, nor allegation of abandonment sustained against any such settler, entryman, or person unless it shall be alleged in the preliminary affidavit or affidavits of contest and proved at the hearing in cases hereinafter initiated that the alleged absence from the land was not due to his employment in such military or naval service; that if he shall be discharged on account of wounds received or disability incurred in the line of duty, then the term of his enlistment shall be deducted from the required length of residence, without reference to the time of actual service: *Provided*, That no patent shall issue to any homestead settler who has not resided upon, improved, and cultivated his homestead for a period of at least one year. [— Stat. L. —.]

SEC. 2. [Death of settler or entryman in service.] That any settler upon the public lands of the United States; or any entryman whose application has been allowed; or any person who has made application for public lands

which thereafter may be allowed under the homestead laws, who dies while actually engaged in the military or naval service of the United States as a private soldier, officer, seaman, marine, national guardsman, or member of any other organization for offense or defense authorized by Congress during any war in which the United States may be engaged, then his widow, if unmarried, or in case of her death or marriage, his minor orphan children, or his or their legal representatives, may proceed forthwith to make final proof upon such entry or application thereafter allowed, and shall be entitled to receive Government patent for such land; and that the death of such soldier while so engaged in the service of the United States shall, in the administration of the homestead laws, be construed to be equivalent to a performance of all requirements as to residence and cultivation upon such homestead. [— *Stat. L.* —.]

An Act For the protection of desert-land entrymen who enter the military or naval service of the United States in time of war.

[*Act of Aug. 7, 1917, ch. —, — Stat. L. —.*]

[**Desert-land entrymen — military or naval service — effect.**] That no desert-land entry made or held under the provisions of the Act of March third, eighteen hundred and seventy-seven, as amended by the Act of March third, eighteen hundred and ninety-one, by an officer or enlisted man in the Army, Navy, Marine Corps, or Organized Militia of the United States shall be subject to contest or cancellation for failure to make or expend the sum of \$1 per acre per year in improvements upon such claim, or to effect the reclamation thereof, during the period said entryman or his successor in interest is engaged in the military service of the United States during the present war with Germany, and until six months thereafter, and the time within which such entryman or claimant is required to make such expenditures and effect reclamation of the land shall be, exclusive of the time of his actual service in the Army, Navy, Marine Corps, or Organized Militia of the United States: *Provided*, That said desert-land entry shall have been made by the said officer or enlisted man prior to his enlistment: *Provided further*, That each such entryman or claimant shall, within six months after the passage of this Act, or within six months after he is mustered into the service, file in the local land office of the district wherein his claim is situate a notice of his muster into the service of the United States and of his desire to hold said desert claim under this Act: *Provided further*, That the term "enlisted man," as used in this section shall include any person selected to serve in the military forces of the United States as provided by the Act entitled "An Act authorizing the President to increase temporarily the Military Establishment of the United States," approved May eighteenth, nineteen hundred and seventeen. [— *Stat. L.* —.]

For the Act of March 3, 1877, ch. 107, as amended by the Act of March 3, 1891, ch. 561, mentioned in the text, see 6 Fed. Stat. Ann. 392; 8 Fed. Stat. Ann. (2d ed.) 692.

The Act of May 18, 1917, ch. —, also mentioned in the text, is given in WAR DEPARTMENT AND MILITARY ESTABLISHMENT.

SEC. 10. [Enlarged homesteads — lands without water for domestic uses — residence — cultivation — former Act amended.] That section six of the Act of Congress approved June seventeenth, nineteen hundred and ten, "An Act to provide for an enlarged homestead," be, and the same is hereby, amended to read as follows:

"**SEC. 6.** That whenever the Secretary of the Interior shall find any tracts of land in the State of Idaho, subject to entry under this Act, do not have upon them such a sufficient supply of water suitable for domestic purposes as would make continuous residence upon the lands possible he may, in his discretion, designate such tracts of land, not to exceed in the aggregate one million acres, and thereafter they shall be subject to entry under this Act without the necessity of residence upon the land entered: *Provided*, That the entryman shall in good faith cultivate not less than one-sixteenth of the entire area of the entry which is susceptible of cultivation during the first year of the entry, not less than one-eighth during the second year, and not less than one-fourth during the third year of the entry and until final proof: *Provided further*, That after six months from the date of entry and until final proof the entryman shall be a resident of the State of Idaho." [— *Stat. L.* —.]

The foregoing section 10 is a part of an Act of Aug. 10, 1917, ch. —, entitled "An Act To provide further for the national security and defense by stimulating agriculture and facilitating the distribution of agricultural products." Section 12 of this Act, given in *AGRICULTURE*, *ante*, p. 46, contains provisions relating to the expiration of the entire Act and should be read in connection with this section.

For the Act of June 17, 1910, ch. 298, § 6, amended by this section, see 1912 Supp. Fed. Stat. Ann. 317; 8 Fed. Stat. Ann. (2d ed.) 619.

An Act Providing for an amendment to section twenty-two hundred and ninety-three of the Revised Statutes, allowing homestead and other public land affidavits to be taken before the military commander of any person engaged in military or naval service of the United States.

[*Act of Oct. 6, 1917, ch. —, — Stat. L.* —.]

[Affidavits — before whom taken — persons in military or naval service.] That during the continuance of the present war with Germany, and until his discharge from service, any man serving in the armed forces of the United States, who, prior to the beginning of his services was a settler, an applicant, or entryman under the land laws of the United States, or who has, prior to enlistment, filed a contest, with the view of exercising preference right of entry therefor, may make any affidavit required by law or regulation of the department, affecting such application, entry, or contest, or necessary to the making of entry in the case of the successful termination of such contest awarding him preference right of entry, before his commanding officer as provided in section twenty-two hundred and ninety-three of the Revised Statutes of the United States, which affidavits shall be as binding in law and with like penalties as if taken before the Register of the United States Land Office. [— *Stat. L.* —.]

For R. S. sec. 2293, mentioned in the text, see 6 Fed. Stat. Ann. 304; 8 Fed. Stat. Ann. (2d ed.) 572.

An Act To authorize absence by homestead settlers and entrymen, and for other purposes.

[*Act of Dec. 20, 1917, ch. —, Stat. L. —.*]

[Homestead settlers and entrymen — leave of absence pending war.] That during the pendency of the existing war any homestead settler or entryman shall be entitled to a leave of absence from his land for the purpose of performing farm labor, and such absence, while actually engaged in farm labor, shall, upon compliance with the terms of this Act, be counted as constructive residence: *Provided*, That each settler or entryman within fifteen days after leaving his claim for the purpose herein provided shall file notice thereof in the United States Land Office, and at the expiration of the calendar year file in said land office of the district wherein his claim is situated a written statement, under oath and corroborated by two witnesses, giving the date or dates when he left his claim, date or dates of return thereto, and where and for whom he was engaged in farm labor during such period or periods of absence: *Provided further*, That nothing herein shall excuse any homestead settler or entryman from making improvements or performing the cultivation required by applicable law upon his claim or entry: *Provided further*, That the provisions of this Act shall apply only to homestead settlers and entrymen who may have filed their application prior to the passage of this Act. The Secretary of the Interior is authorized to provide rules and regulations for carrying this Act into effect. [*— Stat. L. —.*]

An Act To amend an Act entitled "An Act making appropriations to supply deficiencies in appropriations for the fiscal year nineteen hundred and fifteen and for prior years, and for other purposes."

[*Act of March 21, 1918, ch. —, — Stat. L. —.*]

[Desert land entries — final proof — extension of time.] That the provisions of the last three paragraphs of section five of the Act of March fourth, nineteen hundred and fifteen, "An Act making appropriations to supply deficiencies in appropriations for the fiscal year nineteen hundred and fifteen, and for prior years, and for other purposes," be, and the same are hereby, extended and made applicable to any lawful pending desert-land entry made prior to March fourth, nineteen hundred and fifteen: *Provided*, That in cases where such entries have been assigned prior to the date of the Act the assignees shall, if otherwise qualified, be entitled to the benefit hereof. [*— Stat. L. —.*]

For the Act of March 4, 1915, ch. 147, § 5, mentioned in the text, see 1916 Supp. Fed. Stat. Ann. 201; 3 Fed. Stat. Ann. (2d ed.) 201.

[Sec. 1.] [Local land offices — registers and receivers — expenses.]

• • • That no expenses chargeable to the Government shall be incurred

by registers and receivers in the conduct of local land offices except upon previous specific authorization by the Commissioner of the General Land Office. [— *Stat. L.* —.]

This and the following paragraph of the text are from the Sundry Civil Appropriation Act of July 1, 1918, ch. ____.

Provisions identical with those of these paragraphs were contained in the like Appropriation Act of July 1, 1916, ch. 209, 39 *Stat. L.* 299, and June 12, 1907, ch. —, § 1, — *Stat. L.* —.

[Hearings — depositions — fees.] * * * For hearings or other proceedings held by order of the Commissioner of the General Land Office to determine the character of lands; whether alleged fraudulent entries are of that character or have been made in compliance with law; and of hearings in disbarment proceedings, \$35,000: *Provided*, That where depositions are taken for use in such hearings the fees of the officer taking them shall be 20 cents per folio for taking and certifying same and 10 cents per folio for each copy furnished to a party on request. [— *Stat. L.* —.]

See the note to the preceding paragraph of the text.

[Sec. 1.] [Clerks from office of surveyor general — detail — traveling expenses.] * * * The Secretary of the Interior is authorized to detail temporarily clerks from the office of one surveyor general to another as the necessities of the service may require and to pay their actual necessary traveling expenses in going to and returning from such office out of the appropriation for surveying the public lands. A detailed statement of traveling expenses incurred hereunder shall be made to Congress at the beginning of each regular session thereof. [— *Stat. L.* —.]

This is from the Legislative, Executive, and Judicial Appropriation Act of July 3, 1918, ch. _____. Identical provisions have appeared in like appropriation Acts for preceding years.

PUBLIC MONEYS

Act of March 21, 1916, ch. 52, 718.

Lost, Stolen or Destroyed Checks — Duplicates — R. S. Sec. 3646 Amended, 718.

An Act To amend section thirty-six hundred and forty-six of the Revised Statutes of the United States as reenacted and amended by Act of February twenty-third, nineteen hundred and nine.

[*Act of March 21, 1916, ch. 52, 39 Stat. L. 37.*]

[Lost, stolen or destroyed checks — duplicates — R. S. sec. 3646 amended.] That section thirty-six hundred and forty-six of the Revised Statutes be, and hereby is, amended to read as follows:

“**Sec. 3646.** That whenever any original check is lost, stolen, or destroyed disbursing officers and agents of the United States are authorized,

within three years from the date of such check, to issue a duplicate check, under such regulations in regard to its issue and payment, and upon the execution of such bond, with sureties, to indemnify the United States, and proof of loss of original check, as the Secretary of the Treasury shall prescribe: *Provided*, That whenever any original check or warrant of the Post Office Department has been lost, stolen, or destroyed the Postmaster General may authorize the issuance of a duplicate thereof, at any time within three years from the date of such original check or warrant, upon the execution by the owner thereof of such bond of indemnity as the Postmaster General may prescribe: *Provided further*, That when such original check or warrant does not exceed in amount the sum of \$50 and the payee or owner is, at the date of the application, an officer or employee in the service of the Post Office Department, whether by contract, designation, or appointment, the Postmaster General may, in lieu of an indemnity bond, authorize the issuance of a duplicate check or warrant upon such an affidavit as he may describe, to be made before any postmaster by the payee or owner of an original check or warrant." [39 Stat. L. 37.]

For R. S. sec. 3646, amended by this Act, as originally enacted, see 6 Fed. Stat. Ann. 563.

For R. S. sec. 3646, amended by this Act, as previously amended by the Act of Feb. 23, 1909, ch. 174, see 1909 Supp. Fed. Stat. Ann. 566; 8 Fed. Stat. Ann. (2d ed.) 902.

PUBLIC OFFICERS AND EMPLOYEES

Act of May 10, 1916, ch. 117, 719.

Sec. 6. Double Salaries Restricted — Exceptions, 719.

Act of March 3, 1917, ch. 163, 720.

Sec. 1. Salaries — Source — Supplementing by Individuals, etc., as Misdemeanor, 720.

Act of Oct. 6, 1917, ch. —, 720.

Sec. 8. Employees — Increased Compensation, 720.

9. Persons Receiving More Than One Salary — Additional Compensation, 721.

Act of July 3, 1918, ch. —, 721.

Sec. 6. Civilian Employees of United States and District of Columbia — Increase of Salary — Conditions — Exceptions — Appropriations, 721.

CROSS-REFERENCES

See *FALSE PERSONATION; PENAL LAWS.*

SEC. 6. [Double salaries restricted — exceptions.] That unless otherwise specially authorized by law, no money appropriated by this or any other Act shall be available for payment to any person receiving more than one salary when the combined amount of said salaries exceeds the sum of \$2,000 per annum, but this shall not apply to retired officers or enlisted men of the Army, Navy, Marine Corps, or Coast Guard, or to officers and enlisted men of the Organized Militia and Naval Militia in the several States, Territories, and the District of Columbia: *Provided*, That no such retired officer, officer, or enlisted man shall be denied or deprived of any of

his pay, salary, or compensation as such, or of any other salary or compensation for services heretofore rendered, by reason of any decision or construction of said section six. [39 Stat. L. 120, as amended by 39 Stat. L. 582.]

This is from the Legislative, Executive and Judicial Appropriation Act of May 10, 1916, ch. 117, and was amended to read as here given by the Naval Appropriation Act of Aug. 29, 1916, ch. 417. As originally enacted it was as follows:

"Sec. 6. That unless otherwise specially authorized by law no money appropriated by this or any other Act shall be available for payment to any person receiving more than one salary when the combined amount of said salaries exceeds the sum of \$2,000 per annum, but this shall not apply to retired officers of the Army, Navy, or Marine Corps whenever they may be appointed or elected to public office or whenever the President shall appoint them to office by and with the advice and consent of the Senate or to officers and enlisted men of the Organized Militia and Naval Militia in the several States, Territories, and the District of Columbia."

This section is not to apply to certain school teachers in the District of Columbia by virtue of the provisions of the Act of Oct. 6, 1917, ch. —, § 9, *infra*, p. 721.

See the Act of July 3, 1918, ch. —, § 6, *infra*, p. 721.

[SEC. 1.] [Salaries — source — supplementing by individuals, etc., as misdemeanor.] * * * That on and after July first, nineteen hundred and nineteen, no Government official or employee shall receive any salary in connection with his services as such an official or employee from any source other than the Government of the United States, except as may be contributed out of the treasury of any State, county, or municipality, and no person, association, or corporation shall make any contribution to, or in any way supplement the salary of, any Government official or employee for the services performed by him for the Government of the United States. Any person violating any of the terms of this proviso shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than \$1,000 or imprisonment for not less than six months, or by both such fine and imprisonment as the court may determine. [39 Stat. L. 1106.]

This is from the Legislative, Executive, and Judicial Appropriation Act of March 3, 1917, ch. 163.

SEC. 8. [Employees — increased compensation.] That in determining the right of employees to increased compensation as heretofore authorized by law at rates of five and ten per centum per annum for the fiscal year nineteen hundred and eighteen, such employees as are employed on piece-work, by the hour, or at per diem rates, shall be entitled to receive, from July first, nineteen hundred and seventeen, to June thirtieth, nineteen hundred and eighteen, inclusive, the increased compensation at the rate of ten per centum when the fixed rate of compensation for the regular working hours and on the basis of three hundred and twelve days in said year would amount to less than \$1,200, and at the rate of five per centum when not less than \$1,200 and not more than \$1,800: *Provided*, That this method of computation shall not apply to any per diem employees regularly paid a per diem for every day in the year. [— Stat. L. —.]

The foregoing section 8 and the following section 9 are from the Deficiencies Appropriation Act of Oct. 6, 1917, ch. —.

SEC. 9. [Persons receiving more than one salary — additional compensation.] That section six of the legislative, executive, and judicial appropriation Act, approved May tenth, nineteen hundred and sixteen, as amended by the naval appropriation Act, approved August twenty-ninth, nineteen hundred and sixteen, shall not apply to teachers in the public schools of the District of Columbia who are also employed as teachers of night schools and vacation schools.

See the note to the preceding section 8 of this Act.

The Act of May 10, 1916, ch. 117, § 6, as amended by the Act of Aug. 29, 1916, ch. 417, mentioned in the text, is given *supra*, p. 719.

SEC. 6. [Civilian employees of United States and District of Columbia — increase of salary — conditions — exceptions — appropriations.] That all civilian employees of the Governments of the United States and the District of Columbia who receive a total of compensation at the rate of \$2,500 per annum or less, except as otherwise provided in this section, shall receive, during the fiscal year ending June thirtieth, nineteen hundred and nineteen, additional compensation at the rate of \$120 per annum: *Provided*, That such employees as receive a total of annual compensation at a rate more than \$2,500 and less than \$2,620 shall receive additional compensation at such a rate per annum as may be necessary to make their salaries, plus their additional compensation, at the rate of \$2,620 per annum, and no employee shall receive additional compensation under this section at a rate which is more than thirty per centum of the rate of the total annual compensation received by such employee: *Provided further*, That the increased compensation at the rates of five and ten per centum for the fiscal year ending June thirtieth, nineteen hundred and eighteen, shall not be computed as salary in construing this section: *Provided further*, That where an employee in the service on June thirtieth, nineteen hundred and seventeen, has received during the fiscal year nineteen hundred and eighteen, or shall receive during the fiscal year nineteen hundred and nineteen an increase of salary at a rate in excess of \$200 per annum, or where an employee whether previously in the service or not, has entered the service since June thirtieth, nineteen hundred and seventeen, whether such employee has received an increase in salary or not, such employees shall be granted the increased compensation provided herein only when and upon the certification of the person in the legislative branch or the head of the department or establishment employing such persons of the ability and qualifications personal to such employees as would justify such increased compensation: *Provided further*, That the increased compensation provided in this section to employees whose pay is adjusted from time to time through wage boards or similar authority shall be taken into consideration by such wage boards or similar authority in adjusting the pay of such employees.

The provisions of this section shall not apply to the following: Employees paid from the postal revenues and sums which may be advanced from the Treasury to meet deficiencies in the postal revenues; employees of the Panama Canal on the Canal Zone; employees of the Alaskan Engineering

Commission in Alaska; employees paid from lump-sum appropriations in bureaus, divisions, commissions, or any other governmental agencies or employments created by law since January first, nineteen hundred and sixteen; employees whose duties require only a portion of their time, except charwomen, who shall be included; employees whose services are utilized for brief periods at intervals; persons employed by or through corporations, firms, or individuals acting for or on behalf of or as agents of the United States or any department or independent establishment of the Government of the United States in connection with construction work or the operation of plants; employees who receive a part of their pay from any outside sources under cooperative arrangements with the Government of the United States or the District of Columbia; employees who serve voluntarily or receive only a nominal compensation, and employees who may be provided with special allowances because of their service in foreign countries. The provisions of this section shall not apply to employees of the railroads taken over by the United States, and nothing contained herein shall be deemed a recognition of the employees of such railroads as employees of the United States.

Section six of the legislative, executive, and judicial appropriation Act approved May tenth, nineteen hundred and sixteen, as amended by the naval appropriation Act approved August twenty-ninth, nineteen hundred and sixteen, shall not operate to prevent anyone from receiving the additional compensation provided in this section who otherwise is entitled to receive the same.

Such employees as are engaged on piecework, by the hour, or at per diem rates, if otherwise entitled to receive the additional compensation shall receive the same at the rate to which they are entitled in this section when their fixed rate of pay for the regular working hours and on the basis of three hundred and thirteen days in the said fiscal year would amount to \$2,500 or less: *Provided*, That this method of computation shall not apply to any per diem employees regularly paid a per diem for every day in the year.

So much as may be necessary to pay the increased compensation provided in this section to employees of the Government of the United States is appropriated out of any money in the Treasury not otherwise appropriated.

So much as may be necessary to pay the increased compensation provided in this section to employees of the government of the District of Columbia is appropriated, one-half out of any money in the Treasury not otherwise appropriated and one-half out of the revenues of the District of Columbia, except to employees of the Washington Aqueduct and the water department, which shall be paid entirely from the revenues of the water department.

So much as may be necessary to pay the increased compensation provided in this section to persons employed under trust funds who may be construed to be employees of the Government of the United States or the District of Columbia is authorized to be paid, respectively, from such trust funds.

Reports shall be submitted to Congress on the first day of the next regular session showing for the first four months of the fiscal year the

average number of employees in each department, bureau, office, or establishment receiving the increased compensation at the rate of \$120 per annum and the average number by grades receiving the same at each other rate. [— *Stat. L.* —.]

This section 6 is from the Legislative, Executive, and Judicial Appropriation Act of July 3, 1918, ch. —.

The Act of May 10, 1916, ch. 117, § 6, mentioned in the text, is given as amended by the Act of Aug. 29, 1916, ch. 417, *supra*. p. 719.

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I. NATIONAL PARK SERVICE

An Act To establish a National Park Service, and for other purposes.

[*Act of Aug. 25, 1916, ch. 408, 39 Stat. L. 535.*]

[**SEC. 1.**] [**National Park Service — creation — officers and employees — purpose of service.**] That there is hereby created in the Department

of the Interior a service to be called the National Park Service, which shall be under the charge of a director, who shall be appointed by the Secretary and who shall receive a salary of \$4,500 per annum. There shall also be appointed by the Secretary the following assistants and other employees at the salaries designated: One assistant director, at \$2,500 per annum; one chief clerk, at \$2,000 per annum; one draftsman, at \$1,800 per annum; one messenger, at \$600 per annum; and, in addition thereto, such other employees as the Secretary of the Interior shall deem necessary: *Provided*, That not more than \$8,100 annually shall be expended for salaries of experts, assistants, and employees within the District of Columbia not herein specifically enumerated unless previously authorized by law. The service thus established shall promote and regulate the use of the Federal areas known as national parks, monuments, and reservations hereinafter specified by such means and measures as conform to the fundamental purpose of the said parks, monuments, and reservations, which purpose is to conserve the scenery and the natural and historic objects and the wild life therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations. [39 Stat. L. 535.]

SEC. 2. [Duties of director — cooperation of Secretary of Agriculture.] That the director shall, under the direction of the Secretary of the Interior, have the supervision, management, and control of the several parks and national monuments which are now under the jurisdiction of the Department of the Interior and of the Hot Springs Reservation in the State of Arkansas, and of such other national parks and reservations of like character as may be hereafter created by Congress: *Provided*, That in the supervision, management, and control of national monuments contiguous to national forests the Secretary of Agriculture may cooperate with said National Park Service to such extent as may be requested by the Secretary of the Interior. [39 Stat. L. 535.]

SEC. 3. [Rules and regulations — publication — violation — disposition of timber — leases and privileges.] That the Secretary of the Interior shall make and publish such rules and regulations as he may deem necessary or proper for the use and management of the parks, monuments, and reservations under the jurisdiction of the National Park Service, and any violations of any of the rules and regulations authorized by this Act shall be punished as provided for in section fifty of the Act entitled "An Act to codify and amend the penal laws of the United States," approved March fourth, nineteen hundred and nine, as amended by section six of the Act of June twenty-fifth, nineteen hundred and ten (Thirty-sixth United States Statutes at Large, page eight hundred and fifty-seven). He may also, upon terms and conditions to be fixed by him, sell or dispose of timber in those cases where in his judgment the cutting of such timber is required in order to control the attacks of insects or diseases or otherwise conserve the scenery or the natural or historic objects in any such park, monument, or reservation. He may also provide in his discretion for the destruction of such animals and of such plant life as may be detrimental to the use of any of said parks, monuments, or reservations. He may also grant

privileges, leases, and permits for the use of land for the accommodation of visitors in the various parks, monuments, or other reservations herein provided for, but for periods not exceeding twenty years; and no natural curiosities, wonders, or objects of interest shall be leased, rented, or granted to anyone on such terms as to interfere with free access to them by the public: *Provided, however,* That the Secretary of the Interior may, under such rules and regulations and on such terms as he may prescribe, grant the privilege to graze live stock within any national park, monument, or reservation herein referred to when in his judgment such use is not detrimental to the primary purpose for which such park, monument, or reservation was created, except that this provision shall not apply to Yellowstone National Park. [39 Stat. L. 535.]

For Penal Laws, § 50, mentioned in the text, as originally enacted, see 1909 Supp. Fed. Stat. Ann. 419; for said section 50, as amended by the Act of June 25, 1910, ch. 431, § 6, mentioned in the text, see 1912 Supp. Fed. Stat. Ann. 98, 7 Fed. Stat. Ann. (2d ed.) 618.

SEC. 4. [Effect on prior Act.] That nothing in this Act contained shall affect or modify the provisions of the Act approved February fifteenth, nineteen hundred and one, entitled "An Act relating to rights of way through certain parks, reservations, and other public lands." [39 Stat. L. 536.]

For the Act of Feb. 15, 1901, ch. 372, mentioned in this section, see 6 Fed. Stat. Ann. 513; 8 Fed. Stat. Ann. (2d ed.) 811.

II. CRATER LAKE NATIONAL PARK

An Act To accept the cession by the State of Oregon of exclusive jurisdiction over the lands embraced within the Crater Lake National Park, and for other purposes.

[Act of Aug. 21, 1916, ch. 368, 39 Stat. L. 521.]

[SEC. 1.] [Crater Lake National Park — jurisdiction of United States — laws applicable.] That the provisions of the act of the Legislature of the State of Oregon, approved January twenty-fifth, nineteen hundred and fifteen, ceding to the United States exclusive jurisdiction over the territory embraced within the Crater Lake National Park, are hereby accepted and sole and exclusive jurisdiction is hereby assumed by the United States over such territory, saving, however, to the said State the right to serve civil or criminal process within the limits of the aforesaid park in suits or prosecution for or on account of rights acquired, obligations incurred, or crimes committed in said State but outside of said park, and saving further to the said State the right to tax persons and corporations, their franchises and property, on the lands included in said park. All the laws applicable to places under the sole and exclusive jurisdiction of the United States shall have force and effect in said park. All fugitives from justice taking refuge in said park shall be subject to the same laws as refugees from justice found in the State of Oregon. [39 Stat. L. 521.]

SEC. 2. [Judicial district.] That said park shall constitute a part of the United States judicial district for Oregon, and the district court of the United States in and for Oregon shall have jurisdiction of all offenses committed within said boundaries. [39 Stat. L. 522.]

SEC. 3. [Offenses — punishment.] That if any offense shall be committed in the Crater Lake National Park, which offense is not prohibited or the punishment for which is not specifically provided for by any law of the United States, the offender shall be subject to the same punishment as the laws of the State of Oregon in force at the time of the commission of the offense may provide for a like offense in said State; and no subsequent repeal of any such law of the State of Oregon shall affect any prosecution for said offense committed within said park. [39 Stat. L. 522.]

SEC. 4. [Hunting and fishing — rules and regulations.] That all hunting or the killing, wounding, or capturing at any time of any wild bird or animal, except dangerous animals when it is necessary to prevent them from destroying human lives or inflicting injury, is prohibited within the limits of said park; nor shall any fish be taken out of the waters of the park in any other way than by hook and line, and then only at such seasons and in such times and manner as may be directed by the Secretary of the Interior. That the Secretary of the Interior shall make and publish such rules and regulations as he may deem necessary and proper for the management and care of the park and for the protection of the property therein, especially for the preservation from injury or spoliation of all timber, mineral deposits other than those legally located prior to the passage of this Act, natural curiosities, or wonderful objects within said park, and for the protection of the animals and birds in the park from capture or destruction, and to prevent their being frightened or driven from the park; and he shall make rules and regulations governing the taking of fish from the streams or lakes of the park. Possession within said park of the dead bodies, or any part thereof, of any wild bird or animal shall be prima facie evidence that the person or persons having the same are guilty of violating this Act. Any person or persons, or stage or express company, or railway company, who knows or has reason to believe that they were taken or killed contrary to the provisions of this Act and who receives for transportation any of said animals, birds, or fish so killed, caught, or taken, or who shall violate any of the other provisions of this Act or any rule or regulation that may be promulgated by the Secretary of the Interior with reference to the management and care of the park or for the protection of the property therein, for the preservation from injury or spoliation of timber, mineral deposits other than those legally located prior to the passage of this Act, natural curiosities, or wonderful objects within said park, or for the protection of the animals, birds, or fish in the park, or who shall within said park commit any damage, injury, or spoliation to or upon any building, fence, hedge, gate, guidepost, tree, wood, underwood, timber, garden, crops, vegetables, plants, land, springs, mineral deposits other than those legally located prior to the passage of this Act, natural curiosities, or other matter or thing growing or being thereon or situate therein, shall be deemed guilty of a misdemeanor, and shall be subject to a fine of not more than \$500 or imprisonment not exceeding six months, or both, and be adjudged to pay all costs of the proceedings. [39 Stat. L. 522.]

SEC. 5. [Forfeiture of property used illegally.] That all guns, traps, teams, horses, or means of transportation of every nature or description used by any person or persons within said park limits when engaged in killing, trapping, ensnaring, or capturing such wild beasts, birds, or animals shall be forfeited to the United States and may be seized by the officers in said park and held pending the prosecution of any person or persons arrested under charge of violating the provisions of this Act, and upon conviction under this Act of such person or persons using said guns, traps, teams, horses, or other means of transportation; such forfeiture shall be adjudicated as a penalty in addition to the other punishment provided in this Act. Such forfeited property shall be disposed of and accounted for by and under the authority of the Secretary of the Interior. [39 Stat. L. 523.]

SEC. 6. [United States Commissioner — appointment — jurisdiction — appeals.] That the United States District Court for Oregon shall appoint a commissioner who shall reside in the park and who shall have jurisdiction to hear and act upon all complaints made of any violations of law or of the rules and regulations made by the Secretary of the Interior for the government of the park and for the protection of the animals, birds, and fish, and objects of interest therein, and for other purposes authorized by this Act.

Such commissioner shall have power, upon sworn information, to issue process in the name of the United States for the arrest of any person charged with the commission of any misdemeanor, or charged with a violation of the rules and regulations, or with a violation of any of the provisions of this Act prescribed for the government of said park and for the protection of the animals, birds, and fish in said park, and to try the person so charged, and if found guilty, to impose punishment and to adjudge the forfeiture prescribed.

In all cases of conviction an appeal shall lie from the judgment of said commissioner to the United States District Court for Oregon, and the United States court in said district shall prescribe the rules of procedure and practice for said commissioner in the trial of cases and for appeal to said United States District Court. [39 Stat. L. 523.]

SEC. 7. [Process — issuance — bail.] That any such commissioner shall also have power to issue process as hereinbefore provided for the arrest of any person charged with the commission within said boundaries of any criminal offense not covered by the provisions of section four of this Act to hear the evidence introduced, and if he is of opinion that probable cause is shown for holding the person so charged for trial shall cause such person to be safely conveyed to a secure place of confinement within the jurisdiction of the United States District Court for Oregon, and certify a transcript of the record of his proceedings and the testimony in the case to said court, which court shall have jurisdiction of the case: *Provided*, That the said commissioner shall grant bail in all cases bailable under the laws of the United States or of said State. [39 Stat. L. 523.]

SEC. 8. [Service of process — arrest without process.] That all process issued by the commissioner shall be directed to the marshal of the United States for the district of Oregon, but nothing herein contained shall be so

construed as to prevent the arrest by any officer or employee of the Government or any person employed by the United States in the policing of said reservation within said boundaries without process of any person taken in the act of violating the law or this Act or the regulations prescribed by said Secretary as aforesaid. [39 Stat. L. 523.]

SEC. 9. [Salary of Commissioner.] That the commissioner provided for in this Act shall be paid an annual salary of \$1,500, payable quarterly: *Provided*, That the said commissioner shall reside within the exterior boundaries of said Crater Lake National Park, at a place to be designated by the court making such appointment: *Provided further*, That all fees, costs, and expenses collected by the commissioner shall be disposed of as provided in section eleven of this Act. [39 Stat. L. 523.]

SEC. 10. [Fees, costs, and expenses—payment.] That all fees, costs, and expenses arising in cases under this Act and properly chargeable to the United States shall be certified, approved, and paid as are like fees, costs, and expenses in the courts of the United States. [39 Stat. L. 524.]

SEC. 11. [Deposit of fines and costs.] That all fines and costs imposed and collected shall be deposited by said commissioner of the United States, or the marshal of the United States collecting the same, with the clerk of the United States District Court for Oregon. [39 Stat. L. 524.]

SEC. 12. [Notice of approval of Act.] That the Secretary of the Interior shall notify, in writing, the governor of the State of Oregon of the passage and approval of this Act. [39 Stat. L. 524.]

[SEC. 1.] [Crater Lake National Park—acceptance of patented lands, etc.] * * * Hereafter the Secretary of the Interior is authorized to accept patented lands or rights of way over patented lands in the Crater Lake National Park that may be donated for park purposes. [— Stat. L. —.]

This is from the Sundry Civil Appropriation Act of June 12, 1917, ch. —.

III. GLACIER NATIONAL PARK

An Act To authorize an exchange of lands with owners of private holdings within the Glacier National Park.

[Act of March 3, 1917, ch. 164, 39 Stat. L. 1122.]

[SEC. 1.] [Glacier National Park—elimination of private holdings—exchange of lands.] That the Secretary of the Interior, for the purpose of eliminating private holdings within the Glacier National Park and the preservation intact of the natural forest along the roads in the scenic portions of the park, both on patented and park lands, is hereby empowered,

in his discretion, to obtain for the United States the complete title to any or all of the lands held in private or State ownership within the boundaries of said park within townships thirty-two and thirty-three north, ranges eighteen and nineteen west of Montana principal meridian, by the exchange of dead, decadent, or matured timber of approximately equal values that can be removed from any part of the park without injuriously affecting the scenic beauty thereof; or upon the approval of the Secretary of Agriculture, the timber to be selected or exchanged may be taken from the Government lands within the metes and bounds of the national forests within the State of Montana. [39 Stat. L. 1122.]

SEC. 2. [Value of lands offered for exchange — determination.] That the value of all patented lands within said park, including the timber thereon, offered for exchange, and the value of the timber on park lands, or on Government lands within the metes and bounds of the national forests within the State of Montana, proposed to be given in exchange for such patented lands, shall be ascertained in such manner as the Secretary of the Interior and the Secretary of Agriculture may jointly in their discretion direct, and all expenses incident to ascertaining such values shall be paid by the owners of said patented lands; and such owners shall, before any exchange is effective, furnish the Secretary of the Interior evidence satisfactory to him of title to the patented lands offered in exchange; and if the value of timber on park lands or on the Government lands in the national forests within the State of Montana exceeds the value of the patented lands deeded to the Government in exchange, such excess shall be paid to the Secretary of the Interior by the owners of the patented lands before any timber is removed, and shall be deposited and covered into the Treasury as miscellaneous receipts: *Provided*, That the lands conveyed to the Government under this Act shall become a part of the Glacier National Park. [39 Stat. L. 1122.]

SEC. 3. [Cutting and removing timber — regulations.] That all timber on Government lands in the park must be cut and removed under regulations to be prescribed by the Secretary of the Interior, and any damage which may result to the roads or any part of the park or the national forests in consequence of the cutting and removal of the timber therefrom shall be borne by the owners of the patented lands, and bonds satisfactory to the Secretary of the Interior and the Secretary of Agriculture, jointly, must be given for the payment of such damages, if any, as shall be determined by the Secretary of the Interior so far as the same relates to lands within a national park and by the Secretary of Agriculture where the same relates to lands in the national forests: *Provided further*, That the Secretary of Agriculture and the Secretary of the Interior shall jointly report to Congress in detail the factors upon which valuations were made. [39 Stat. L. 1122.]

[Sec. 1.] [Glacier National Park — acceptance of buildings, etc.]
• • • The Secretary of the Interior is authorized, in his discretion, to accept buildings, moneys, or other property which may be useful in the

betterment of the administration and affairs of the Glacier National Park under his supervision, and which may be donated for park purposes. [— *Stat. L.* —.]

This is from the Sundry Civil Appropriation Act of June 12, 1917, ch. —.

IV. HAWAII NATIONAL PARK

An Act To establish a national park in the Territory of Hawaii.

[*Act of Aug. 1, 1916, ch. 264, 39 Stat. L. 432.*]

[**SEC. 1.**] [**Hawaii National Park — creation — boundaries.**] That the tracts of land on the island of Hawaii and on the island of Maui, in the Territory of Hawaii, hereinafter described, shall be perpetually dedicated and set apart as a public park or pleasure ground for the benefit and enjoyment of the people of the United States, to be known as Hawaii National Park. Said tracts of land are described as follows:

First. All that tract of land comprising portions of the lands of Kapapala and Keauhou, in the district of Kau, and Kahaualea, Panaunui, and Apua, in the district of Puna, on the island of Hawaii, containing approximately thirty-five thousand eight hundred and sixty-five acres, bounded as follows: Beginning at a point on the west edge of the Keamoku Aa Flow (lava flow of eighteen hundred and twenty-three), from which point the true azimuth and distance to Government survey trigonometrical station Ohaikea is one hundred and sixty-six degrees twenty minutes, six thousand three hundred and fifty feet, and running by true azimuths: (First) Along the west edge of the Keamoku lava flow in a northeasterly and northwesterly direction, the direct azimuth and distance being one hundred and ninety-eight degrees ten minutes, fourteen thousand seven hundred feet; (second) two hundred and fifty-six degrees, eleven thousand four hundred feet, more or less, across the land of Kapapala and Keauhou to a marked point on the Humuula trail; (third) three hundred and twenty-eight degrees fifteen minutes, eight thousand seven hundred and twenty-five feet, across the land of Keauhou to the top of the fault north of the Kau road; (fourth) along the fault in a northeasterly direction, the direction azimuth and distance being two hundred and fifty-one degrees and thirty minutes, four thousand three hundred and thirty feet; (fifth) two hundred and forty-five degrees, six thousand feet, to a point near the southwest boundary of the land of Olaa; (sixth) three hundred and thirty-seven degrees ten minutes, eight thousand six hundred and fifty feet, more or less, to the junction of the Hilo and Keauhou roads; (seventh) three hundred and thirty-three degrees and twenty minutes, three thousand three hundred feet, more or less, to the southwest corner of the land of Keeaui; (eighth) three hundred and thirty-two degrees and ten minutes, seven thousand feet, along the land of Kahaualea; (ninth) two hundred and eighty-one degrees, thirty thousand three hundred and seventy-five feet, more or less, across the land of Kahaualea, passing through the north corner of the land of Panaunui, to the north corner of the land of Laeapuki; (tenth) thirty-one degrees thirty minutes, thirteen thousand two hundred feet, more or less,

along the land of Laeapuki and across the land of Panaunui; (eleventh) eighty-nine degrees and ten minutes, thirty-two thousand nine hundred feet, more or less, across the land of Panaunui, Apua, and Keauhou to "Palilele-o-Kalihipaa," the boundary point of the Keauhou-Kapapala boundary; (twelfth) fifty-one degrees and thirty minutes, five thousand and five hundred feet, across the land of Kapapala; (thirteenth) one hundred and two degrees and fifty minutes, nineteen thousand one hundred and fifty feet, across the land of Kapapala to a small cone about one thousand five hundred feet southwest of Puu Koae trigonometrical station; (fourteenth) one hundred and sixty-six degrees twenty minutes, twenty-one thousand feet, across the land of Kapapala to the point of beginning.

Second. All that tract of land comprising portions of the lands of Kapapala and Kahuku, in the district of Kau, island of Hawaii; Keauhou second, in the district of North Kona; and Kaohe, in the district of Hamakua, containing seventeen thousand nine hundred and twenty acres, bounded as follows: Beginning at Pohaku Hanalei of Humuula, a small cone on the brow of Mauna Loa, and at the common boundary points of the lands of Humuula, Kapapala, and Kaohe, from which the true azimuth and distance to Government survey trigonometrical station Omaokoili is one hundred and ninety-five degrees twelve minutes eighteen seconds, seventy-eight thousand two hundred and eighty-six feet, and running by true azimuths: First two hundred and ninety-eight degrees, five thousand two hundred and forty feet; second, twenty-eight degrees, thirty-six thousand nine hundred and sixty feet; third, one hundred and eighteen degrees, twenty-one thousand one hundred and twenty feet; fourth, two hundred and eight degrees, thirty-six thousand nine hundred and sixty feet; fifth, two hundred and ninety-eight degrees, fifteen thousand eight hundred and eighty feet, to the point of beginning.

Third. A strip of land of sufficient width for a road to connect the two tracts of land on the island of Hawaii above described, the width and location of which strip shall be determined by the Secretary of the Interior.

Fourth. All that tract of land comprising portions of the lands of Honuula and Kula, in the district of Makawao, and Kipahulu, Kaupo, and Kahikinui, in the district of Hana, on the island of Maui, containing approximately twenty-one thousand one hundred and fifty acres, bounded as follows: Beginning at a point called Kolekole, on the summit near the most western point of the rim of the crater of Haleakala, and running by approximate azimuths and distances: First, hundred and ninety-three degrees forty-five minutes nineteen thousand three hundred and fifty feet along the west slope of the crater of Haleakala to a point called Puu-o-Ili; second, two hundred and sixty-eight degrees twenty-three thousand feet up the western slope and across Koolau Gap to the point where the southwest boundary of Koolau Forest Reserve crosses the east rim of Koolau Gap; third, three hundred and six degrees thirty minutes seventeen thousand one hundred and fifty feet along the southwest boundary of Koolau Forest Reserve to a point called Palalia, on the east rim of the crater of Haleakala; fourth, along the east rim of the crater of Haleakala, the direct azimuth and distance being three hundred and fifty-four degrees fifteen minutes eighteen thousand three hundred feet to a point on the east rim of Kaupo Gap, shown on Hawaiian Government survey maps at an elevation of four

thousand two hundred and eight feet; fifth, eighty-eight degrees forty-five minutes three thousand three hundred feet across Kaupo Gap to a point called Kaumikaohu, on the boundary line between the lands of Kipahulu and Kahikinui; sixth, one hundred and two degrees and thirty minutes forty thousand seven hundred and fifty feet along the south slope of the crater of Haleakala to the point of beginning. [39 Stat. L. 432.]

SEC. 2. [Existing claims, etc.—easements—rights of way.] That nothing herein contained shall affect any valid existing claim, location, or entry under the land laws of the United States, whether for homestead, mineral, right of way, or any other purpose whatsoever, or shall affect the rights of any such claimant, locator, or entryman to the full use and enjoyment of his land. Whenever consistent with the primary purposes of the park the Act of February fifteenth, nineteen hundred and one, applicable to the location of rights of way in certain national parks and the national forests for irrigation and other purposes, shall be and remain applicable to the lands included within the park. The Secretary of the Interior may, in his discretion and upon such conditions as he may deem wise, grant easements or rights of way for steam, electric, or similar transportation upon or across the park. [39 Stat. L. 433.]

For the Act of Feb. 15, 1901, ch. 372, mentioned in this section, see 6 Fed. Stat. Ann. 513; 8 Fed. Stat. Ann. (2d ed.) 811.

SEC. 3. [Land held in private or municipal ownership as subject to Act.] That no lands located within the park boundaries now held in private or municipal ownership shall be affected by or subject to the provisions of this Act. [39 Stat. L. 434.]

SEC. 4. [Management of park—leases.] That the said park shall be under the executive control of the Secretary of the Interior whose duty it shall be, as soon as practicable, to make and publish such rules and regulations as he may deem necessary or proper for the care and management of the same. Such regulations shall provide for the preservation from injury of all timber, birds, mineral deposits, and natural curiosities or wonders within said park, and their retention in their natural condition as nearly as possible. The Secretary may in his discretion grant leases for terms not exceeding twenty years, at such annual rental as he may determine, of parcels of land in said park of not more than twenty acres in all to any one person, corporation, or company for the erection and maintenance of buildings for the accommodation of visitors; but no such lease shall include any of the objects of curiosity or interest in said park or exclude the public from free and convenient approach thereto or convey, either expressly or by implication, any exclusive privilege within the park except upon the premises held thereunder and for the time granted therein; and every such lease shall require the lessee to observe and obey each and every provision in any Act of Congress and every rule, order, or regulation of the Secretary of the Interior concerning the use, care, management, or government of the park, or any object or property therein, under penalty of forfeiture of such lease. The Secretary may in his discretion grant to persons or corporations now holding leases of land in the park, upon the surrender thereof,

new leases hereunder, upon the terms and stipulations contained in their present leases, with such modifications, restrictions, and reservations as he may prescribe. All of the proceeds of said leases and other revenues that may be derived from any source connected with the park shall be expended under the direction of the Secretary, in the management and protection of the same and the construction of roads and paths therein. The Secretary may also, in his discretion permit the erection and maintenance of buildings in said park for scientific purposes: *Provided*, That no appropriation for the maintenance, supervision, and improvement of said park in excess of \$10,000 annually shall be made unless the same shall have first been expressly authorized by law: *And provided further*, That no appropriation shall be made for the improvement or maintenance of said park until proper conveyances shall be made to the United States of such perpetual easements and rights of way over private lands within the exterior boundaries of said park as the Secretary of the Interior shall find necessary to make said park reasonably accessible in all its parts, and said Secretary shall when such easements and rights of way have been conveyed to the United States report the same to Congress. [39 Stat. L. 437.]

V. LASSEN VOLCANIC NATIONAL PARK

An Act To establish the Lassen Volcanic National Park in the Sierra Nevada Mountains in the State of California, and for other purposes.

[Act of Aug. 9, 1916, ch. 302, 39 Stat. L. 442.]

[SEC. 1.] [Lassen Volcanic National Park — creation — boundaries.]

That all those certain tracts, pieces, or parcels of land lying and being situate in the State of California and within the boundaries particularly described as follows, to wit: Beginning at the northeast corner of section three, township thirty-one, range six east, Mount Diablo meridian, California; thence southerly to the southeast corner of said section; thence easterly to the northeast corner of the northwest quarter of section eleven, said township; thence southerly to southeast corner of the southwest quarter of section fourteen, said township; thence easterly to the northeast corner of the northwest quarter of section twenty-four, said township; thence southerly to the southeast corner of the southwest quarter of section twenty-five, said township; thence westerly to the southwest corner of section twenty-six, said township; thence southerly to the southeast corner of section thirty-four, said township; thence westerly along the sixth standard parallel north, allowing for the proper offsets, to the northeast corner of section three, township thirty north, range six east; thence southerly to the southeast corner of section twenty-seven, said township; thence westerly to the southwest corner of the southeast quarter of section twenty-eight, said township; thence northerly to the northwest corner of the southeast quarter of said section; thence westerly to the southwest corner of the northwest quarter of said section; thence northerly to the northwest corner of said section; thence westerly to the southwest corner of the southeast quarter of section twenty, said township; thence northerly to the

northwest corner of the southeast quarter of said section; thence westerly to the range line between ranges five and six east; thence southerly along said range line to the southeast corner of township thirty north, range five east; thence westerly along the township line between townships twenty-nine and thirty north to the southwest corner of section thirty-three, township thirty north, range five east; thence northerly to the northwest corner of said section; thence westerly to the southwest corner of the southeast quarter of section twenty-nine, said township; thence northerly to the northwest corner of the southeast quarter of said section; thence westerly to the southwest corner of the northwest quarter of said section; thence northerly to the northwest corner of said section; thence westerly to the southwest corner of the southeast quarter of section twenty, township thirty north, range four east; thence northerly to the northwest corner of the southeast quarter of section eight, said township; thence easterly to the northeast corner of the southwest quarter of section nine, said township; thence northerly to the township line between townships thirty and thirty-one north; thence easterly along the sixth standard parallel north, allowing for the proper offsets, to the southwest corner of section thirty-three, township thirty-one north, range four east; thence northerly to the northwest corner of section twenty-one, said township; thence easterly to the range line between ranges four and five east; thence northerly along said range line to the northwest corner of fractional section eighteen, township thirty-one north, range five east; thence easterly to the southwest corner of section twelve, said township; thence northerly to the northwest corner of section one, said township; thence easterly along the township line between townships thirty-one and thirty-two north to the northeast corner of section three, township thirty-one north, range six east, the place of beginning, are hereby reserved and withdrawn from settlement, occupancy, disposal, or sale, under the laws of the United States, and said tracts are dedicated and set apart as a public park or 'pleasuring ground for the benefit and enjoyment of the people of the United States under the name and to be known and designated as the Lassen Volcanic National Park; and all persons who shall locate or settle upon or occupy the same, or any part thereof, except as hereinafter provided, shall be considered trespassers and be removed therefrom: *Provided*, That nothing herein contained shall affect any valid existing claim, location, or entry under the land laws of the United States or the rights of any such claimant, locator, or entryman to the full use and enjoyment of his land: *Provided further*, That rights of way for steam or electric railways, automobiles, or wagon roads may be acquired within said Lassen Volcanic National Park under filings or proceedings hereafter made or instituted under the laws applicable to the acquisition of such rights over or upon the national forest lands of the United States when the construction of such roads will not interfere with the objects of the national park, and that the United States Reclamation Service may enter upon and utilize for flowage or other purposes any area within said park which may be necessary for the development and maintenance of a Government reclamation project; that no lands located within the park boundaries now held in private, municipal, or State ownership shall be affected by or subject to the provisions of this Act: *And provided further*, That no lands within the limits of said park hereby created belong-

ing to or claimed by any railroad or other corporation now having or claiming the right of indemnity selection by virtue of any law or contract whatsoever shall be used as a basis for indemnity selection in any State or Territory whatsoever for any loss sustained by reason of the creation of said park. [39 Stat. L. 442.]

SEC. 2. [Management — rules and regulations — leases.] That said park shall be under the exclusive control of the Secretary of the Interior, whose duty it shall be, as soon as practicable, to make and publish such rules and regulations not inconsistent with the laws of the United States as he may deem necessary or proper for the care, protection, management, and improvement of the same. Such regulations being primarily aimed at the freest use of the said park for recreation purposes by the public and for the preservation from injury or spoliation of all timber, mineral deposits, and natural curiosities or wonders within said park and their retention in their natural condition as far as practicable and for the preservation of the park in a state of nature so far as is consistent with the purposes of this Act. He shall provide against the wanton destruction of the fish and game found within said park and against their capture or destruction for purposes of merchandise or profit, and generally shall be authorized to take all such measures as shall be necessary to fully carry out the objects and purposes of this Act. Said Secretary may, in his discretion, execute leases to parcels of grounds not exceeding ten acres in extent at any one place to any one person or persons or company for not to exceed twenty years when such ground is necessary for the erection of buildings for the accommodation of visitors and to parcels of ground not exceeding one acre in extent and for not to exceed twenty years to persons who have heretofore erected, or whom he may hereafter authorize to erect, summer homes or cottages. Such leases or privileges may be renewed or extended at the expiration of the terms thereof. No exclusive privilege, however, shall be granted within the park except upon the ground leased. The regulations governing the park shall include provisions for the use of automobiles therein and the reasonable grazing of stock. [39 Stat. L. 444.]

SEC. 3. [Sale of timber.] That the Secretary of the Interior may also sell and permit the removal of such matured or dead or down timber as he may deem necessary or advisable for the protection or improvement of the park. [39 Stat. L. 444.]

SEC. 4. [Charges for leases, etc.] That the Secretary of the Interior may exact such charges as he deems proper for leases and all other privileges granted hereunder. [39 Stat. L. 444.]

SEC. 5. [Appropriation — authorization.] That no appropriation for the maintenance, supervision, or improvement of said park in excess of \$5,000 annually shall be made unless the same shall have first been expressly authorized by law. [39 Stat. L. 444.]

VI. MESA VERDE NATIONAL PARK

[SEC. 1.] [**Mesa Verde National Park — acceptance of patented lands, etc.**] * * * Hereafter the Secretary of the Interior is authorized to accept patented lands or rights of way over patented lands in the Mesa Verde National Park that may be donated for park purposes. [— *Stat. L.* —.]

This is from the Sundry Civil Appropriation Act of June 12, 1917, ch. —.

VII. MOUNT MCKINLEY NATIONAL PARK

An Act To establish the Mount McKinley National Park, in the Territory of Alaska.

[*Act of Feb. 26, 1917, ch. 121, 39 Stat. L. 938.*]

[SEC. 1.] [**Mount McKinley National Park — establishment — boundaries.**] That the tract of land in the Territory of Alaska particularly described by and included within the metes and bounds, to wit: Beginning at a point as shown on Plate III, reconnaissance map of the Mount McKinley region, Alaska, prepared in the Geological Survey, edition of nineteen hundred and eleven, said point being at the summit of a hill between two forks of the headwaters of the Toklat River, approximate latitude sixty-three degrees forty-seven minutes, longitude one hundred and fifty degrees twenty minutes; thence south six degrees twenty minutes west nineteen miles; thence south sixty-eight degrees west sixty miles; thence in a southeasterly direction approximately twenty-eight miles to the summit of Mount Russell; thence in a northeasterly direction approximately eighty-nine miles to a point twenty-five miles due south of a point due east of the point of beginning; thence due north twenty-five miles to said point; thence due west twenty-eight and one-half miles to the point of beginning, is hereby reserved and withdrawn from settlement, occupancy, or disposal under the laws of the United States, and said tract is dedicated and set apart as a public park for the benefit and enjoyment of the people, under the name of the Mount McKinley National Park. [39 *Stat. L.* 938.]

SEC. 2. [**Effect on existing claims, etc.**] That nothing herein contained shall affect any valid existing claim, location, or entry under the land laws of the United States, whether for homestead, mineral, right of way, or any other purpose whatsoever, or shall affect the rights of any such claimant locator, or entryman to the full use and enjoyment of his land. [39 *Stat. L.* 938.]

SEC. 3. [**Rights of way for irrigation and other purposes.**] That whenever consistent with the primary purposes of the park, the Act of February fifteenth, nineteen hundred and one, applicable to the location of rights of way in certain national parks and national forests for irrigation and

other purposes, shall be and remain applicable to the lands included within the park. [39 Stat. L. 938.]

For the Act of Feb. 15, 1901, ch. 372, mentioned in the text, see 6 Fed. Stat. Ann. 513; 8 Fed. Stat. Ann. (2d ed.) 811.

SEC. 4. [Mineral land laws — applicability.] Nothing in this Act shall in any way modify or effect the mineral land laws now applicable to the lands in the said park. [39 Stat. L. 938.]

SEC. 5. [Control and management — regulations.] That the said park shall be under the executive control of the Secretary of the Interior, and it shall be the duty of the said executive authority, as soon as practicable, to make and publish such rules and regulations not inconsistent with the laws of the United States as the said authority may deem necessary or proper for the care, protection, management, and improvement of the same, the said regulations being primarily aimed at the freest use of the said park for recreation purposes by the public and for the preservation of animals, birds, and fish and for the preservation of the natural curiosities and scenic beauties thereof. [39 Stat. L. 938.]

SEC. 6. [Establishment as game refuge — limitation on killing of game.] That the said park shall be, and is hereby, established as a game refuge, and no person shall kill any game in said park except under an order from the Secretary of the Interior for the protection of persons or to protect or prevent the extermination of other animals or birds: *Provided*, That prospectors and miners engaged in prospecting or mining in said park may take and kill therein so much game or birds as may be needed for their actual necessities when short of food; but in no case shall animals or birds be killed in said park for sale or removal therefrom, or wantonly. [39 Stat. L. 939.]

SEC. 7. [Leases — privileges and concessions.] That the said Secretary of the Interior may, in his discretion, execute leases to parcels of ground not exceeding twenty acres in extent for periods not to exceed twenty years whenever such ground is necessary for the erection of establishments for the accommodation of visitors; may grant such other necessary privileges and concessions as he deems wise for the accommodation of visitors; and may likewise arrange for the removal of such mature or dead or down timber as he may deem necessary and advisable for the protection and improvement of the park: *Provided*, That no appropriation for the maintenance of said park in excess of \$10,000 annually shall be made unless the same shall have first been expressly authorized by law. [39 Stat. L. 939.]

SEC. 8. [Offenses — punishment.] That any person found guilty of violating any of the provisions of this Act shall be deemed guilty of a misdemeanor, and shall be subjected to a fine of not more than \$500 or imprisonment not exceeding six months, or both, and be adjudged to pay all costs of the proceedings. [39 Stat. L. 939.]

VIII. MOUNT RAINIER NATIONAL PARK

An Act To accept the cession by the State of Washington of exclusive jurisdiction over the lands embraced within the Mount Rainier National Park, and for other purposes.

[Act of June 30, 1916, ch. 197, 39 Stat. L. 243.]

[SEC. 1.] [Mount Rainier National Park—cession of jurisdiction over.] That the provisions of the act of the legislature of the State of Washington, approved March sixteenth, nineteen hundred and one, ceding to the United States exclusive jurisdiction over the territory embraced within the Mount Rainier National Park, are hereby accepted and sole and exclusive jurisdiction is hereby assumed by the United States over such territory, saving, however, to the said State the right to serve civil or criminal process within the limits of the aforesaid park in suits or prosecution for or on account of rights acquired, obligations incurred, or crimes committed in said State but outside of said park, and saving further to the said State the right to tax persons and corporations, their franchises and property, on the lands included in said park. All the laws applicable to places under the sole and exclusive jurisdiction of the United States shall have force and effect in said park. All fugitives from justice taking refuge in said park shall be subject to the same laws as refugees from justice found in the State of Washington. *[39 Stat. L. 243.]*

SEC. 2. [Park in what judicial district.] That said park shall constitute a part of the United States judicial district for the western district of Washington, and the district court of the United States in and for said district shall have jurisdiction of all offenses committed within said boundaries. *[39 Stat. L. 244.]*

SEC. 3. [Offenses — punishment.] That if any offense shall be committed in the Mount Rainier National Park, which offense is not prohibited or the punishment for which is not specifically provided for by any law of the United States, the offender shall be subject to the same punishment as the laws of the State of Washington in force at the time of the commission of the offense may provide for a like offense in said State; and no subsequent repeal of any such law of the State of Washington shall affect any prosecution for said offense committed within said park. *[39 Stat. L. 244.]*

SEC. 4. [Hunting and fishing — rules and regulations.] That all hunting or the killing, wounding, or capturing at any time of any wild bird or animal, except dangerous animals when it is necessary to prevent them from destroying human lives or inflicting personal injury, is prohibited within the limits of said park; nor shall any fish be taken out of the waters of the park in any other way than by hook and line, and then only at such seasons and in such times and manner as may be directed by the Secretary of the Interior. That the Secretary of the Interior shall make and publish such rules and regulations as he may deem necessary and proper for the management and care of the park and for the protection of the property therein, especially for the preservation from injury or spoliation of all

timber, mineral deposits other than those legally located prior to the passage of the Act of May twenty-seventh, nineteen hundred and eight (Thirty-fifth Statutes, page three hundred and sixty-five), natural curiosities, or wonderful objects within said park, and for the protection of the animals and birds in the park from capture or destruction, and to prevent their being frightened or driven from the park; and he shall make rules and regulations governing the taking of fish from the streams or lakes in the park. Possession within said park of the dead bodies, or any part thereof, of any wild bird or animal shall be prima facie evidence that the person or persons having the same are guilty of violating this Act. Any person or persons, or stage or express company, or railway company, who knows or has reason to believe that they were taken or killed contrary to the provisions of this Act and who receives for transportation any of said animals, birds, or fish so killed, caught, or taken, or who shall violate any of the other provisions of this Act or any rule or regulation that may be promulgated by the Secretary of the Interior with reference to the management and care of the park or for the protection of the property therein, for the preservation from injury or spoliation of timber, mineral deposits other than those legally located prior to the passage of the Act of May twenty-seventh, nineteen hundred and eight (Thirty-fifth Statutes, page three hundred and sixty-five), natural curiosities, or wonderful objects within said park, or for the protection of the animals, birds, or fish in the park, or who shall within said park commit any damage, injury, or spoliation to or upon any building, fence, hedge, gate, guidepost, tree, wood, underwood, timber, garden, crops, vegetables, plants, lands, springs, mineral deposits other than those legally located prior to the passage of the Act of May twenty-seventh, nineteen hundred and eight (Thirty-fifth Statutes, page three hundred and sixty-five), natural curiosities, or other matter or thing growing or being thereon or situated therein, shall be deemed guilty of a misdemeanor and shall be subject to a fine of not more than \$500 or imprisonment not exceeding six months, or both, and be adjudged to pay all costs of the proceedings. [39 Stat. L. 244.]

For the provisions of the Act of May 27, 1908, ch. 200, § 1, mentioned in the text, see 8 Fed. Stat. Ann. (2d ed.) 986.

SEC. 5. [Forfeiture of guns, etc.] That all guns, traps, teams, horses, or means of transportation of every nature or description used by any person or persons within said park limits when engaged in killing, trapping, ensnaring, or capturing such wild beasts, birds, or animals shall be forfeited to the United States and may be seized by the officers in said park and held pending the prosecution of any person or persons arrested under charge of violating the provisions of this Act, and upon conviction under this Act of such person or persons using said guns, traps, teams, horses, or other means of transportation, such forfeiture shall be adjudicated as a penalty in addition to the other punishment provided in this Act. Such forfeited property shall be disposed of and accounted for by and under the authority of the Secretary of the Interior. [39 Stat. L. 245.]

SEC. 6. [Commissioner — appointment — jurisdiction — appeals.] That the United States District Court for the Western District of Washington

shall appoint a commissioner who shall reside in the park and who shall have jurisdiction to hear and act upon all complaints made of any violations of law or of the rules and regulations made by the Secretary of the Interior for the government of the park and for the protection of the animals, birds, and fish, and objects of interest therein, and for other purposes authorized by this Act.

Such commissioner shall have power, upon sworn information, to issue process in the name of the United States for the arrest of any person charged with the commission of any misdemeanor, or charged with a violation of the rules and regulations, or with a violation of any of the provisions of this Act prescribed for the government of said park and for the protection of the animals, birds, and fish in said park, and to try the person so charged, and, if found guilty, to impose punishment and to adjudge the forfeiture prescribed.

In all cases of conviction an appeal shall lie from the judgment of said commissioner to the United States District Court for the Western District of Washington, and the United States district court in said district shall prescribe the rules of procedure and practice for said commissioner in the trial of cases and for appeal to said United States district court. [39 Stat. L. 245.]

SEC. 7. [Process — bail.] That any such commissioner shall also have power to issue process as hereinbefore provided for the arrest of any person charged with the commission within said boundaries of any criminal offense not covered by the provisions of section four of this Act to hear the evidence introduced, and if he is of opinion that probable cause is shown for holding the person so charged for trial shall cause such person to be safely conveyed to a secure place of confinement within the jurisdiction of the United States District Court for the Western District of Washington, and certify a transcript of the record of his proceedings and the testimony in the case to said court, which court shall have jurisdiction of the case: *Provided*, That the said commissioner shall grant bail in all cases bailable under the laws of the United States or of said State. [39 Stat. L. 245.]

SEC. 8. [Service of process — arrest without process.] That all process issued by the commissioner shall be directed to the marshal of the United States for the western district of Washington, but nothing herein contained shall be so construed as to prevent the arrest by any officer or employee of the Government or any person employed by the United States in the policing of said reservation within said boundaries without process of any person taken in the act of violating the law or this Act or the regulations prescribed by said Secretary as aforesaid. [39 Stat. L. 245.]

SEC. 9. [Salary of Commissioner.] That the commissioner provided for in this Act shall be paid an annual salary of \$1,500, payable quarterly: *Provided*, That the said commissioner shall reside within the exterior boundaries of said Mount Rainier National Park, at a place to be designated by the court making such appointment: *And provided further*, That all fees, costs, and expenses collected by the commissioner shall be disposed of as provided in section eleven of this Act. [39 Stat. L. 246.]

SEC. 10. [Fees, costs, and expenses.] That all fees, costs, and expenses arising in cases under this Act and properly chargeable to the United States shall be certified, approved, and paid as are like fees, costs, and expenses in the courts of the United States. [39 Stat. L. 246.]

SEC. 11. [Fines and costs — deposits.] That all fines and costs imposed and collected shall be deposited by said commissioner of the United States, or the marshal of the United States collecting the same, with the clerk of the United States District Court for the Western District of Washington. [39 Stat. L. 246.]

SEC. 12. [Notice of passage of Act.] That the Secretary of the Interior shall notify, in writing, the governor of the State of Washington of the passage and approval of this Act. [39 Stat. L. 246.]

[SEC. 1.] **[Mount Ranier National Park — acceptance of patented lands, etc.]** * * * Hereafter the Secretary of the Interior is authorized to accept patented lands or rights of way over patented lands in the Mount Ranier National Park that may be donated for park purposes. [— Stat. L. —.]

This is from the Sundry Civil Appropriation Act of June 12, 1917, ch. —.

IX. ROCKY MOUNTAIN NATIONAL PARK

[SEC. 1.] **[Rocky Mountain National Park — acceptance of patented lands, etc.]** * * * Hereafter the Secretary of the Interior is authorized to accept patented lands or rights of way over patented lands in the Rocky Mountain National Park that may be donated for park purposes. [— Stat. L. —.]

This is from the Sundry Civil Appropriation Act of June 12, 1917, ch. —.

An Act To amend "An act to protect the birds and animals in Yellowstone National Park, and to punish crimes in said park, and for other purposes," approved May seventh, eighteen hundred and ninety-four.

[Act of June 28, 1916, ch. 179, 39 Stat. L. 238.]

[Yellowstone National Park — hunting and fishing — violation of regulations — former Act amended.] That the following paragraph, forming part of section four of an Act entitled "An Act to protect the birds and animals in Yellowstone National Park, and to punish crimes in said park, and for other purposes," approved May seventh, eighteen hundred and ninety-four, to wit:

"Any person found guilty of violating any of the provisions of this act or any rule or regulation that may be promulgated by the Secretary

of the Interior with reference to the management and care of the park, or for the protection of the property therein, for the preservation from injury or spoliation of timber, mineral deposits, natural curiosities, or wonderful objects within said park, or for the protection of the animals, birds, and fish in the said park, shall be deemed guilty of a misdemeanor, and shall be subjected to a fine of not more than \$1,000 or imprisonment not exceeding two years, or both, and be adjudged to pay all costs of the proceedings," be amended to read as follows:

"Any person found guilty of violating any of the provisions of this Act or any rule or regulation that may be promulgated by the Secretary of the Interior with reference to the management and care of the park, or for the protection of the property therein, for the preservation from injury or spoliation of timber, mineral deposits, natural curiosities, or wonderful objects within said park, or for the protection of the animals, birds, and fish in the said park, shall be deemed guilty of a misdemeanor, and shall be subjected to a fine of not more than \$500 or imprisonment not exceeding six months, or both, and be adjudged to pay all costs of the proceedings." [39 Stat. L. 238.]

For the Act of May 7, 1894, ch. 72, § 4, amended by this Act, see 6 Fed. Stat. Ann. 619; 8 Fed. Stat. Ann. (2d ed.) 997.

X. NATIONAL MILITARY PARKS

An Act To establish a national military park at the battlefield of Guilford Courthouse.

[Act of March 2, 1917, ch. 152, 39 Stat. L. 996.]

[SEC. 1.] [Battlefield of Guilford Courthouse—creation of national military park—boundaries.] That in order to preserve for historical and professional military study one of the most memorable battles of the Revolutionary War, the battlefield of Guilford Courthouse, in the State of North Carolina, is hereby declared to be a national military park whenever the title to the same shall have been acquired by the United States; that is to say, the area inclosed by the following lines:

Those certain tracts or parcels of land in the county of Guilford and State of North Carolina, Morehead Township, more particularly described as follows:

First tract: Beginning at a stone on the west side of the Greensboro macadam road; thence north eighty-six degrees five minutes west eight hundred and seventy-seven and one-tenth feet to a stone; thence north seven degrees fifty-five minutes west four hundred and eight and eight-tenths feet to a stone; thence north seven degrees five minutes east one hundred and ninety and eight-tenths feet to a stone; thence north sixty degrees forty-five minutes east two hundred and sixty-five and four-tenths feet to a stone; thence north fourteen degrees fifteen minutes west seven hundred and one and six-tenths feet to a stone; thence north eight degrees forty-five minutes west three hundred and forty-eight and one-tenth feet

to a stone; thence north seventy-one degrees thirty-five minutes east nine hundred and thirty-seven and eight-tenths feet to a stone; thence south fifty degrees forty-five minutes east one hundred and fifty-seven and two-tenths feet to a stone; thence north seventy degrees forty-five minutes east eight hundred and seventy-five and five-tenths feet to a stone; thence north twenty-seven degrees twenty-eight minutes west two hundred and two and nine-tenths feet to a stone; thence north twenty-seven degrees eight minutes west two hundred and twenty-six and eight-tenths feet to a stone; thence north sixty-nine degrees forty-five minutes east two hundred and sixty-five and nine-tenths feet to a stone; thence north sixty-eight degrees fifty minutes east three hundred and seventy-eight and eight-tenths feet to a stone; thence south fifty-three degrees fifty minutes east eight hundred and ninety-two feet to a stone; thence south eighty-three degrees twenty minutes east two hundred and ninety-one and four-tenths feet to a stone; thence south twenty-nine degrees twenty minutes west six hundred and fifty-five and seven-tenths feet to a stone; thence south twelve degrees fifty-five minutes west eight hundred and forty-three feet to a stone; thence about west ten feet to a stone; thence south six degrees five minutes west one hundred and thirty-three and four tenths feet to a stone; thence north sixty degrees west thirty-eight feet to a stone; thence north forty-nine degrees west fifty-two and six-tenths feet to a stone; thence north eighty-seven degrees ten minutes west one thousand four hundred and twenty-seven and three-tenths feet to a stone; thence north twelve degrees forty minutes east one hundred and ninety-six and five-tenths feet to a stone; thence south seventy-one degrees west two hundred and thirty-seven and nine-tenths feet to a stone; thence south three degrees fifty-seven minutes west one thousand and eleven and three-tenths feet to the beginning.

Second tract: Beginning at a stone on the south side of Holt Avenue; thence south nine degrees forty-five minutes west one hundred and nine and eight-tenths feet to a stone; thence south eighty-four degrees forty-five minutes east two hundred and forty-nine feet to a stone; thence northeasterly to Holt Avenue; thence with Holt Avenue north eighty-seven degrees ten minutes west to the beginning, on which is located the Joe Spring.

Together with all privileges and appurtenances thereunto belonging.

The aforesaid tracts of land containing in the aggregate one hundred and twenty-five acres, more or less, and being the property of the Guilford Battle-Ground Company, according to a survey by W. B. Trogdon and W. B. Trogdon, junior, made June eight, nineteen hundred and eleven. And the area thus inclosed shall be known as the Guilford Courthouse National Military Park. [39 Stat. L. 996.]

SEC. 2. [Control and direction of establishment — conveyance of lands.] That the establishment of the Guilford Courthouse National Military Park shall be carried forward under the control and direction of the Secretary of War, who is hereby authorized to receive from the Guilford Battle-Ground Company, a corporation chartered by the State of North Carolina, a deed of conveyance to the United States of all the lands belonging to said corporation, embracing one hundred and twenty-five acres, more or less, and described more particularly in the preceding section. [39 Stat. L. 997.]

SEC. 3. [Additional lands — acquisition.] That the Secretary of War is hereby authorized and directed to acquire at such times and in such manner such additional lands adjacent to the Guilford Courthouse National Military Park as may be necessary for the purposes of the park and for its improvement. [39 Stat. L. 997.]

SEC. 4. [Commissioners — appointment — compensation.] That the affairs of the Guilford Courthouse National Military Park shall, subject to the supervision and direction of the Secretary of War, be in charge of three commissioners, one of whom shall be an actual resident of Guilford County, State of North Carolina, one an actual resident of the State of Maryland, and one an actual resident of the State of Delaware. They shall be appointed by the Secretary of War, the actual resident of Guilford County, State of North Carolina, so appointed to serve, unless sooner relieved, for a term of four years. The resident commissioner shall act as chairman and as secretary of the commission. One of the other commissioners so appointed shall serve for a term of three years, and the other for a term of two years, unless sooner relieved. Upon the expiration of the terms of said commissioners the Secretary of War shall, in the manner hereinbefore prescribed, appoint their successors, to serve, unless sooner relieved, for a term of four years each from the date of their respective appointments. The office of said commissioners shall be in the city of Greensboro, North Carolina. The resident commissioner shall receive as compensation \$1,000 per annum, the nonresident commissioners \$100 per annum each, and they shall not be entitled to any other pay or allowances of any kind whatsoever. [39 Stat. L. 997.]

SEC. 5. [Commissioners — duties.] That it shall be the duty of the commission named in the preceding section, under the direction of the Secretary of War, to open or repair such roads as may be necessary to the purposes of the park, and to ascertain and mark with historical tablets or otherwise, as the Secretary of War may determine, all lines of battle of the troops engaged in the Battle of Guilford Courthouse and other historical points of interest pertaining to the battle within the park or its vicinity; and the said commission in establishing this military park shall also have authority, under the direction of the Secretary of War, to employ such labor and services and to obtain such supplies and material as may be necessary to the establishment of said park, under such regulations as he may consider best for the interest of the Government, and the Secretary of War shall make and enforce all needed regulations for the care of the park. [39 Stat. L. 998.]

SEC. 6. [Marking battle lines — entry of state troops for purpose — monuments, etc.] That it shall be lawful for any State that had troops engaged in the battle of Guilford Courthouse to enter upon the lands of the Guilford Courthouse National Military Park for the purpose of ascertaining and marking the lines of battle of its troops engaged therein: *Provided*, That before any such lines are permanently designated the position of the lines and the proposed methods of marking them, by monuments, tablets, or otherwise, shall be submitted to and approved by the Secretary

of War; and all such lines, designs, and inscriptions for the same shall first receive the written approval of the Secretary of War. [39 Stat. L. 998.]

SEC. 7. [Offenses — punishment.] That if any person shall, except by permission of the Secretary of War, destroy, mutilate, deface, injure, or remove any monument, column, statues, memorial structures, or work of art that shall be erected or placed upon the grounds of the park by lawful authority, or shall destroy or remove any fence, railing, inclosure, or other work for the protection or ornamentation of said park, or any portion thereof, or shall destroy, cut, hack, bark, break down, or otherwise injure any tree, brush, or shrubbery that may be growing upon said park, or shall cut down or fell or remove any timber, battle relic, tree, or trees growing or being upon said park, or hunt within the limits of the park, any person so offending and found guilty thereof before any justice of the peace of the county of Guilford, State of North Carolina, shall, for each and every such offense, forfeit and pay a fine, in the discretion of the justice, according to the aggravation of the offense, of not less than \$5 or more than \$50, one-half for the use of the park and the other half to the informer, to be enforced and recovered before such justice in like manner as debts of like nature are now by law recoverable in the said county of Guilford, State of North Carolina. [39 Stat. L. 998.]

XI. YELLOWSTONE NATIONAL PARK

[SEC. 1.] [Extensions and improvements of roads — plan of making.] * * * Hereafter road extensions and improvements shall be made in said park under and in harmony with the general plan of roads and improvements to be approved by the Secretary of the Interior. [— Stat. L. —.]

This is from the Sundry Civil Appropriation Act of July 1, 1918, ch. —, following an appropriation for the Yellowstone National Park, to which the words "said park" refer.

XII. MISCELLANEOUS PROVISIONS

[SEC. 1.] [National parks generally — revenues — estimates of expenses.] * * * From and after July first, nineteen hundred and eighteen, all revenues of the national parks, except Hot Springs Reservation, Arkansas, shall be covered into the Treasury to the credit of miscellaneous receipts; and the Secretary of the Interior is directed to submit, for the fiscal year nineteen hundred and nineteen and annually thereafter, estimate of the amounts required for the care, maintenance, and development of the said parks. [— Stat. L. —.]

This and the following paragraphs are from the Sundry Civil Appropriation Act of June 12, 1917, ch. —.

[**Antietam battle field — Superintendent.**] * * * For pay of superintendent of Antietam battle field, said superintendent to perform his duties under the direction of the Quartermaster Corps and to be selected and appointed by the Secretary of War, at his discretion, the person selected and appointed to this position to be an honorably discharged Union soldier, \$1,500. [*— Stat. L. —.*]

See the note to the preceding paragraph of this section.
Provisions similar to those of this paragraph have appeared in like Appropriation Acts for many years, and its permanency may be questioned.

PUBLIC PRINTING

Act of July 1, 1916, ch. 209, 748.

Sec. 3. Reports and Accompanying Documents — Appropriations — Distribution, 748.

Act of March 3, 1917, ch. 163, 749.

Sec. 1. State, War, and Navy Branch Printing Office Abolished, 749.

Act of May 12, 1917, ch. —, 749.

Contracts with Private Printing Establishments — Payment — Former Act Amended, 749.

Act of Oct. 6, 1917, ch. —, 749.

Sec. 1. Bureau of Engraving and Printing — Bonds, Notes, Checks, etc. — Manner of Printing, 749.

Use of Appropriations for Quartermaster Corps, 750.

Act of July 8, 1918, ch. —, 750.

Employees in Government Printing Office — Increase in Pay — Duration of Increase, 750.

CROSS-REFERENCE

Printing by Weather Bureaus, see WEATHER.

SEC. 3. [Reports and accompanying documents — appropriations — distribution.] That appropriations herein and hereafter made for printing and binding shall not be used for any annual report or the accompanying documents unless the copy therefor is furnished to the Public Printer in the following manner: Copies of the documents accompanying such annual reports on or before the fifteenth day of October of each year; copies of the annual reports on or before the fifteenth day of November of each year; complete revised proofs of the accompanying documents and the annual reports on the tenth and twentieth days of November of each year, respectively; and all of said annual reports and accompanying documents shall be printed, made public, and available for distribution not later than within the first five days after the assembling of each regular session of Congress. The provisions of this section shall not apply to the annual reports of the Smithsonian Institution, the Commissioner of Patents, or the Comptroller of the Currency. [*39 Stat. L. 336.*]

This is from the Sundry Civil Appropriation Act of July 1, 1916, ch. 209.

[SEC. 1.] [State, War and Navy branch printing office abolished.] The Public Printer is directed to remove, within thirty days after the passage of this Act, all printing machinery, material, and so forth, from all rooms in the State, War, and Navy Building now assigned to the Department of State, and the State, War, and Navy branch printing office is hereby abolished. [39 Stat. L. 1083.]

This is from the Legislative, Executive, and Judicial Appropriation Act of March 3, 1917, ch. 163.

[Contracts with private printing establishments — payment — former Act amended.] * * * That section eighty-seven of the printing and binding Act, approved January twelfth, eighteen hundred and ninety-five (volume twenty-eight, Revised Statutes, page six hundred and twenty-two), and section two of the act approved June thirtieth, nineteen hundred and six (volume thirty-four, Revised Statutes, page seven hundred and sixty-two), are hereby amended as follows:

“That in time of actual hostilities the Secretary of War may procure from commercial or other printing establishments, by contract or open market purchase, such printing and binding as may be required for the use of the Army and also for the National Guard of the several States and Territories and of the District of Columbia or other military forces while in the military service of the United States or about to be called into said service, payment for such printing and binding to be made from available appropriations.” [— Stat. L. —.]

This is from the Army Appropriation Act of May 12, 1917, ch. —.

For the Act of Jan. 12, 1895, ch. 23, § 87, amended by the text, see 6 Fed. Stat. Ann. 658; 8 Fed. Stat. Ann. (2d ed.) 1040.

For the Act of June 30, 1906, ch. 3914, § 2, amended by the text, see 1909 Supp. Fed. Stat. Ann. 573; 8 Fed. Stat. Ann. (2d ed.) 1049.

[SEC. 1.] [Bureau of Engraving and Printing — bonds, notes, checks, etc.—manner of printing.] * * * The Secretary of the Treasury is hereby authorized, during the continuance of the war with Germany, to have all bonds, notes, checks, or other printed papers, now or hereafter authorized to be executed by the Bureau of Engraving and Printing of the Treasury Department, printed in such manner and by whatever process and on any style of presses that he may consider suitable for the issue of such securities and other papers in the form that will properly safeguard the interests of the Government, except that such presses as are used in printing from intaglio plates shall be operated by plate printers: *Provided*, That in the execution of such work only such part of it shall be transferred from the present method of executing it as will permit of the retention in the service of such permanent plate printers as are now engaged in the execution of such work, or such temporary plate printers, similarly employed and who can qualify under civil service regulations for permanent appointment, and all Acts or parts of Acts heretofore enacted relative to the use of power and hand presses in the printing of securities of the Government are hereby suspended and declared to be not in effect during

the continuance of said war, and at the termination of the war such Acts or parts of Acts shall be in effect and force as heretofore. [— *Stat. L.* —.]

This and the following paragraph are from the Deficiencies Appropriation Act of Oct. 6, 1917, ch. —.

[Use of appropriations for Quartermaster Corps.] * * * That no part of the appropriations for the Quartermaster Corps shall be expended on printing unless the same shall be done at the Government Printing Office, or by contract after due notice and competition, except in such cases as the emergency will not admit of the giving notice of competition, and in cases where it is impracticable to have the necessary printing done by contract the same may be done, with the approval of the Secretary of War, by the purchase of material and hire of the necessary labor for the purpose. [— *Stat. L.* —.]

See the note to the preceding paragraph of this section.

Provisions similar to those of this paragraph have appeared in various Acts for preceding years. An identical provision appeared in the Army Appropriation Act of Aug. 29, 1916, ch. 418, § 1, 39 Stat. L. 631.

[Employees in Government Printing Office—increase in pay—duration of increase.] * * * From and after the passage of this Act the compensation of all printer-linotype operators, printer-monotype-keyboard operators, makers-up, proofreaders, and pressmen employed in the Government Printing Office shall be at the rate of 65 cents per hour for the time actually employed, and that the pay of all compositors, bookbinders, and bookbinder-machine operators employed in the Government Printing Office shall be at the rate of 60 cents per hour for the time actually employed: *Provided*, That employees of the Government Printing Office whose wages are increased by the provisions of this Act shall be paid at the rates provided for herein during the period of the present war and for six months after the proclamation of peace, when the wages paid such employees shall thereafter be at the rates paid at the time of the passage of this Act, unless otherwise provided by law. [— *Stat. L.* —.]

This is from the Deficiencies Appropriation Act of July 8, 1918, ch. —.

PUBLIC PROPERTY, BUILDINGS AND GROUNDS

Act of July 1, 1916, ch. 209, 750.

*Sec. 1. Public Buildings — Gas and Electric Lighting Fixtures, 750.
Public Buildings — Furniture, 751.
Assay Offices — Expenses — Appropriation Available, 751.*

[SEC. 1.] **[Public buildings — gas and electric lighting fixtures.]** * * * That hereafter gas and electric lighting fixtures for the equipment of public buildings and extensions in course of construction under the control of the

Treasury Department, except such gas and electric lighting fixtures as are under contract or may be otherwise provided for by law, shall be paid for from the respective appropriations provided for the construction of such public buildings or extensions. [39 Stat. L. 273.]

This and the two following paragraphs of the text are from the Sundry Civil Appropriation Act of July 1, 1916, ch. 209.

[Public buildings — furniture.] * * * That all furniture now owned by the United States in other public buildings or in buildings rented by the United States shall be used, so far as practicable, whether it corresponds with the present regulation plant for furniture or not. [39 Stat. L. 273.]

See the note to the preceding paragraph of the text.

[Assay offices — expenses — appropriation available.] * * * That hereafter the annual appropriations for the care, maintenance, and repair of Federal buildings and their mechanical and vault and safe equipments, shall be available in the same manner and to the same extent for assay offices assigned quarters in Federal buildings under the authority contained in chapter five hundred and forty-six of the Act approved July first, eighteen hundred and ninety-eight (Thirtieth Statutes, page six hundred and fourteen), as such appropriations are available for other branches of the Government service quartered in such buildings. [39 Stat. L. 273.]

See the note to the second preceding paragraph of the text.

For the Act of July 1, 1898, ch. 546, § 1, mentioned in the text, see 6 Fed. Stat. Ann. 716; 8 Fed. Stat. Ann. (2d ed.) 1125.

QUARANTINE

See AGRICULTURE; ANIMALS; HEALTH AND QUARANTINE

RAILROADS

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I. GOVERNMENT-AIDED RAILROADS

[SEC. 1.] [Land-grant railroads — compensation for transportation of troops.] * * * Land-grant railroads organized under the Act of July twenty-eighth, eighteen hundred and sixty-six, chapter three hundred, shall receive the same compensation for transportation during the existing war emergency of property and troops of the United States as may be paid to land-grant railroads, organized under the land-grant Act of March third, eighteen hundred and sixty-three, and the Act of July twenty-seventh, eighteen hundred and sixty-six, chapter two hundred and seventy-eight, for such transportation during said emergency: *Provided*, That this paragraph shall not be construed as changing in any other way or for any other period of time the rights and duties of the land-grant railroads first above mentioned. [— *Stat. L.* —.]

This is from the Deficiencies Appropriations Act of Oct. 6, 1917, ch. —.

The Acts mentioned in the text are the Act of July 28, 1866, ch. 300, 14 Stat. L. 338; the Act of March 3, 1863, ch. 98, 12 Stat. L. 772, and the Act of July 27, 1866, ch. 278, 14 Stat. L. 292. These Acts, being of local nature only, are not included in either edition of *Fed. Stat. Ann.*

[SEC. 1.] [Transportation of troops, munitions and supplies.] * * * For the payment of Army transportation lawfully due such land-grant railroads as have not received aid in Government bonds (to be adjusted in accordance with the decisions of the Supreme Court in cases decided under such land-grant Acts), but in no case shall more than fifty per centum of full amount of service be paid: *Provided*, That such compensation shall be computed upon the basis of the tariff or lower special rates for like transportation performed for the public at large and shall be accepted as in full for all demands for such service: *Provided further*, That in expending the money appropriated by this Act a railroad company which has not received aid in bonds of the United States, and which obtained a grant of public land to aid in the construction of its railroad on condition that such railroad should be a post route and military road, subject to the use of the United States for postal, military, naval, and other Government services, and also subject to such regulations as Congress may impose restricting the charge for such Government transportation, having claims against the United States for transportation of troops and munitions of war and military supplies and property over such aided railroads, shall be paid out of the moneys appropriated by the foregoing provision only on the basis of such rate for the transportation of such troops and munitions of war and military supplies and property as the Secretary of War shall deem just and reasonable under the foregoing provision, such rate not to exceed fifty per centum of the compensation for such Government transportation as shall at that time be charged to and paid by private parties to any such company for like and similar transportation; and the amount so fixed to be paid shall be accepted as in full for all demands for such service: *And provided further*, That nothing in the preceding provisos shall be construed to prevent the accounting officers of the Government from making full payment to land-grant railroads for transportation of property or persons where the courts of the United States have held that such property or persons do not

come within the scope of the deductions provided for in the land-grant Acts. [*— Stat. L. —.*]

This is from the Deficiencies Appropriation Act of March 28, 1918, ch. —

II. SAFETY APPLIANCES AND EQUIPMENT.

An Act To amend an Act entitled "An Act to promote the safety of employees and travelers upon railroads by compelling common carriers engaged in interstate commerce to equip their locomotives with safe and suitable boilers and appurtenances thereto," approved February seventeenth, nineteen hundred and eleven.

[*Act of June 26, 1918, ch. —, — Stat. L. —.*]

[SEC. 1.] [**Inspectors — salaries — Locomotive Boiler Act of 1911 amended.**] That the Act entitled "An Act to promote the safety of employees and travelers upon railroads by compelling common carriers engaged in interstate commerce to equip their locomotives with safe and suitable boilers and appurtenances thereto," approved February seventeenth, nineteen hundred and eleven, as amended, be, and is hereby, amended as follows:

"Amend section three so as to provide that the salary of the chief inspector shall be \$5,000 per year; the salary of each assistant inspector shall be \$4,000 per year.

"Amend section four so as to provide that the salary of each district inspector shall be \$3,000 per year." [*— Stat. L. —.*]

For the Locomotive Boiler Act of Feb. 17, 1911, ch. 103, §§ 3 and 4, amended by the text, see 1912 Supp. Fed. Stat. Ann. 339, 340; 8 Fed. Stat. Ann. (2d ed.) 1201.

SEC. 2. [**Effect of Act.**] Nothing herein contained shall be construed as amending, altering, or repealing any of the other provisions of said sections. [*— Stat. L. —.*]

III. HOURS OF SERVICE OF EMPLOYEES

An Act To establish an eight-hour day for employees of carriers engaged in interstate and foreign commerce, and for other purposes.

[*Act of Sept. 3, 5, 1916, ch. 436, 39 Stat. L. 721.*]

[SEC. 1.] [**Eight-hour day — establishment for employees of carriers engaged in interstate, etc., commerce.**] That beginning January first, nineteen hundred and seventeen, eight hours shall, in contracts for labor and service, be deemed a day's work and the measure or standard of a day's work for the purpose of reckoning the compensation for services of all employees who are now or may hereafter be employed by any common carrier by railroad, except railroads independently owned and operated not exceeding one hundred miles in length, electric street railroads, and electric interurban railroads, which is subject to the provisions of the Act

of February fourth, eighteen hundred and eighty-seven, entitled "An Act to regulate commerce," as amended, and who are now or may hereafter be actually engaged in any capacity in the operation of trains used for the transportation of persons or property on railroads, except railroads independently owned and operated not exceeding one hundred miles in length, electric street railroads, and electric interurban railroads, from any State or Territory of the United States or the District of Columbia to any other State or Territory of the United States or the District of Columbia, or from one place in a Territory to another place in the same Territory, or from any place in the United States to an adjacent foreign country, or from any place in the United States through a foreign country to any other place in the United States: *Provided*, That the above exceptions shall not apply to railroads though less than one hundred miles in length whose principal business is leasing or furnishing terminal or transfer facilities to other railroads, or are themselves engaged in transfers of freight between railroads or between railroads and industrial plants. [39 Stat. L. 721.]

This is the so-called "Adamson Act." It was approved on Sept. 3 and again on Sept. 5, because the 3d fell on Sunday, and some doubt existed as to the validity of an Act approved on that day.

For the Interstate Commerce Act of Feb. 4, 1887, ch. 104, mentioned in this section, see 3 Fed. Stat. Ann. 809, 4 Fed. Stat. Ann. (2d ed.) 331.

The constitutionality of this Act was sustained in *Wilson v. Neu*, 243 U. S. 332, 61 U. S. (L. ed.) 755.

SEC. 2. [Commission appointed to observe effect of eight-hour standard workday — report — appropriation.] That the President shall appoint a commission of three, which shall observe the operation and effects of the institution of the eight-hour standard workday as above defined and the facts and conditions affecting the relations between such common carriers and employees during a period of not less than six months nor more than nine months, in the discretion of the commission, and within thirty days thereafter such commission shall report its findings to the President and Congress; that each member of the commission created under the provisions of this Act shall receive such compensation as may be fixed by the President. That the sum of \$25,000, or so much thereof as may be necessary, be, and hereby is, appropriated, out of any money in the United States Treasury not otherwise appropriated, for the necessary and proper expenses incurred in connection with the work of such commission, including salaries, per diem, traveling expenses of members and employees, and rent, furniture, office fixtures and supplies, books, salaries, and other necessary expenses, the same to be approved by the chairman of said commission and audited by the proper accounting officers of the Treasury. [39 Stat. L. 722.]

SEC. 3. [Compensation pending report of commission.] That pending the report of the commission herein provided for and for a period of thirty days thereafter the compensation of railway employees subject to this Act for a standard eight-hour workday shall not be reduced below the present standard day's wage, and for all necessary time in excess of eight

hours such employees shall be paid at a rate not less than the pro rata rate for such standard eight-hour workday. [39 Stat. L. 722.]

SEC. 4. [Violation of Act—punishment.] That any person violating any provision of this Act shall be guilty of a misdemeanor and upon conviction shall be fined not less than \$100 and not more than \$1,000, or imprisoned not to exceed one year, or both. [39 Stat. L. 722.]

An Act To amend section three of an Act entitled "An Act to promote the safety of employees and travelers upon railroads by limiting the hours of service of employees thereon," approved March fourth, nineteen hundred and seven.

[Act of May 4, 1916, ch. 109, 39 Stat. L. 61.]

[SEC. 1.] [Hours of service of employees—limitation—penalties—prosecutions—defenses—former Act amended.] That section three of an Act entitled "An Act to promote the safety of employees and travelers upon railroads by limiting the hours of service of employees thereon," approved March fourth, nineteen hundred and seven, be, and the same is hereby, amended so as to read as follows:

"**SEC. 3.** That any such common carrier, or any officer or agent thereof, requiring or permitting any employee to go, be, or remain on duty in violation of the second section hereof shall be liable to a penalty of not less than \$100 nor more than \$500 for each and every violation, to be recovered in a suit or suits to be brought by the United States district attorney in the district court of the United States having jurisdiction in the locality where such violations shall have been committed; and it shall be the duty of such district attorney to bring such suit upon satisfactory information being lodged with him; but no such suit shall be brought after the expiration of one year from the date of such violation; and it shall also be the duty of the Interstate Commerce Commission to lodge with the proper district attorney information of any such violations as may come to its knowledge. In all prosecutions under this Act the common carrier shall be deemed to have knowledge of all acts of all its officers and agents: *Provided*, That the provisions of this Act shall not apply in any case of casualty or unavoidable accident of the act of God; nor where the delay was the result of a cause not known to the carrier or its officer or agent in charge of such employee at the time said employee left a terminal, and which could not have been foreseen: *Provided further*, That the provisions of this Act shall not apply to the crews of wrecking or relief trains." [39 Stat. L. 61.]

For the Act of March 4, 1907, ch. 2939, § 3, amended by this Act, see 1909 Supp. Fed. Stat. Ann. 583; 8 Fed. Stat. Ann. (2d ed.) 1406.

SEC. 2. [Effect on prior or pending suits.] That nothing in this Act shall affect, or be held to affect, any suit that may be instituted for recovery of penalty for violation of the Act hereby amended occurring prior to the approval of this Act, or any suit for such penalty or growing out of alleged violation of the Act hereby amended which may be pending in any court at the time of the approval of this Act. [39 Stat. L. 61.]

IV. FEDERAL CONTROL

An Act To provide for the operation of transportation systems while under Federal control, for the just compensation of their owners, and for other purposes.

[*Act of March 21, 1918, ch. —, — Stat. L. —.*]

[SEC. 1.] [Railroads — federal control — compensation — payment — income — excess of income over compensation — computation — taxes — maintenance.] That the President, having in time of war taken over the possession, use, control, and operation (called herein Federal control) of certain railroads and systems of transportation (called herein carriers), is hereby authorized to agree with and to guarantee to any such carrier making operating returns to the Interstate commerce commission, that during the period of such Federal control it shall receive as just compensation an annual sum, payable from time to time in reasonable installments, for each year and pro rata for any fractional year of such Federal control, not exceeding a sum equivalent as nearly as may be to its average annual railway operating income for the three years ended June thirtieth, nineteen hundred and seventeen.

That any railway operating income accruing during the period of Federal control in excess of such just compensation shall remain the property of the United States. In the computation of such income, debits and credits arising from the accounts called in the monthly reports to the Interstate Commerce Commission equipment rents and joint facility rents shall be included, but debits and credits arising from the operation of such street electric passenger railways, including railways commonly called interurbans, as are at the time of the agreement not under Federal control, shall be excluded. If any lines were acquired by, leased to, or consolidated with such railroad or system between July first, nineteen hundred and fourteen, and December thirty-first, nineteen hundred and seventeen, both inclusive, and separate operating returns to the Interstate Commerce Commission were not made for such lines after such acquisition, lease, or consolidation, there shall (before the average is computed) be added to the total railway operating income of such railroad or system for the three years ended June thirtieth, nineteen hundred and seventeen, the total railway operating income of the lines so acquired, leased, or consolidated, for the period beginning July first, nineteen hundred and fourteen, and ending on the date of such acquisition, lease, or consolidation, or on December thirty-first, nineteen hundred and seventeen, whichever is the earlier. The average annual railway operating income shall be ascertained by the Interstate Commerce Commission and certified by it to the President. Its certificate shall, for the purpose of such agreement, be taken as conclusive of the amount of such average annual railway operating income.

Every such agreement shall provide that any Federal taxes under the Act of October third, nineteen hundred and seventeen, or Acts in addition thereto or in amendment thereof, commonly called war taxes, assessed for the period of Federal control beginning January first, nineteen hundred and eighteen, or any part of such period, shall be paid by the carrier out of its own funds, or shall be charged against or deducted from the just

compensation; that other taxes assessed under Federal or any other governmental authority for the period of Federal control or any part thereof, either on the property used under such Federal control or on the right to operate as a carrier, or on the revenues or any part thereof derived from operation (not including, however, assessments for public improvements or taxes assessed on property under construction, and chargeable under the classification of the Interstate Commerce Commission to investment in road and equipment), shall be paid out of revenues derived from railway operations while under Federal control; that all taxes assessed under Federal or any other governmental authority for the period prior to January first, nineteen hundred and eighteen, whenever levied or payable, shall be paid by the carrier out of its own funds, or shall be charged against or deducted from the just compensation.

Every such agreement shall also contain adequate and appropriate provisions for the maintenance, repair, renewals, and depreciation of the property, for the creation of any reserves or reserve funds found necessary in connection therewith, and for such accounting and adjustments of charges and payments, both during and at the end of Federal control as may be requisite in order that the property of each carrier may be returned to it in substantially as good repair and in substantially as complete equipment as it was in at the beginning of Federal control, and also that the United States may, by deductions from the just compensations or by other proper means and charges, be reimbursed for the cost of any additions, repairs, renewals, and betterments to such property not justly chargeable to the United States; in making such accounting and adjustments, due consideration shall be given to the amounts expended or reserved by each carrier for maintenance, repairs, renewals, and depreciation during the three years ended June thirtieth, nineteen hundred and seventeen, to the condition of the property at the beginning and at the end of the Federal control and to any other pertinent facts and circumstances.

The President is further authorized in such agreement to make all other reasonable provisions, not inconsistent with the provisions of this Act or of the Act entitled "An Act making appropriations for the support of the Army for the fiscal year ending June thirtieth, nineteen hundred and seventeen, and for other purposes," approved August twenty-ninth, nineteen hundred and sixteen, that he may deem necessary or proper for such Federal control or for the determination of the mutual rights and obligations of the parties to the agreement arising from or out of such Federal control.

If the President shall find that the condition of any carrier was during all or a substantial portion of the period of three years ended June thirtieth, nineteen hundred and seventeen, because of nonoperation, receivership, or where recent expenditures for additions or improvements or equipment were not fully reflected in the operating railway income of said three years or a substantial portion thereof, or because of any undeveloped or abnormal conditions, so exceptional as to make the basis of earnings hereinabove provided for plainly inequitable as a fair measure of just compensation, then the President may make with the carrier such agreement for such amount as just compensation as under the circumstances of the particular case he shall find just.

That every railroad not owned, controlled, or operated by another carrier company, and which has heretofore competed for traffic with a railroad or railroads of which the President has taken the possession, use, and control, or which connects with such railroads and is engaged as a common carrier in general transportation, shall be held and considered as within "Federal control," as herein defined, and necessary for the prosecution of the war, and shall be entitled to the benefit of all the provisions of this Act: *Provided, however,* That nothing in this paragraph shall be construed as including any street or interurban electric railway which has as its principal source of operating revenue urban, suburban, or interurban passenger traffic, or sale of power, heat and light, or both.

The agreement shall also provide that the carrier shall accept all the terms and conditions of this Act and any regulation or order made by or through the President under authority of this Act or of that portion of the Act entitled "An Act making appropriations for the support of the Army for the fiscal year ending June thirtieth, nineteen hundred and seventeen, and for other purposes," approved August twenty-ninth, nineteen hundred and sixteen, which authorizes the President in time of war to take possession, assume control, and utilize systems of transportation. [— *Stat. L.* —.]

For the Act of Oct. 3, 1917, ch. —, mentioned in the text, see INTERNAL REVENUE, *ante*, p. 336.

For the Army Appropriation Act of Aug. 29, 1916, ch. 418, § 1, see WAR DEPARTMENT AND MILITARY ESTABLISHMENT.

Jurisdiction of negligence cases against railroad.—In *Muir v. Louisville, etc., R. Co.*, 247 Fed. 888, (1918 D. C. W. D. Ky.) it was held that an action against a railroad company, for an accident occurring December 20, 1917, and therefore before the President's proclamation of December 26, 1917, taking control of the railroad under this Act, should be remanded from a federal court, to which it had been removed from a state court, back to the state court, as the federal court had no jurisdiction. The contention of the railroad company was that the

action arose under the constitution and laws of the United States.

Garnishment proceedings will not lie against a railroad company under government control, by reason of the fact that the President's proclamation of December 26, 1917, taking over the railroads expressly prevented levies by lien or final process. *Dooley v. Penn. R. Co.*, (1918 D. C. Minn.) 250 Fed. 142. See also *Louisville, etc., R. Co. v. Steel*, (Ky. 1918) 202 S. W. 878.

SEC. 2. [Compensation in absence of agreement — payment — excess of profits over compensation.] That if no such agreement is made, or pending the execution of an agreement, the President may nevertheless pay to any carrier while under Federal control an annual amount, payable in reasonable installments, not exceeding ninety per centum of the estimated annual amount of just compensation, remitting such carrier, in case where no agreement is made, to its legal rights for any balance claimed to the remedies provided in section three hereof. Any amount thereafter found due such carrier above the amount paid shall bear interest at the rate of six per centum per annum. The acceptance of any benefits under this section shall constitute an acceptance by the carrier of all the provisions of this Act and shall obligate the carrier to pay to the United States, with interest at the rate of six per centum per annum from a date or dates fixed in proceedings under section three, the amount by which the sums received under this section exceed the sum due in such proceedings. [— *Stat. L.* —.]

SEC. 3. [Adjustment of claims for compensation — boards for adjustment — powers, duties, etc.— agreements.] That all claims for just compensation not adjusted (as provided in section one) shall, on the application of the President or of any carrier, be submitted to boards, each consisting of three referees to be appointed by the Interstate Commerce Commission, members of which and the official force thereof being eligible for service on such boards without additional compensation. Such boards of referees are hereby authorized to summon witnesses, require the production of records, books, correspondence, documents, memoranda, and other papers, view properties, administer oaths, and may hold hearings in Washington and elsewhere, as their duties and the convenience of the parties may require. In case of disobedience to a subpoena the board may invoke the aid of any district court of the United States in requiring the attendance and testimony of witnesses and the production of documentary evidence, and such court within the jurisdiction of which such inquiry is carried on may, in case of contumacy or refusal to obey a subpoena issued to any person, corporation, partnership, or association, issue an order requiring appearance before the board, or the production of documentary evidence if so ordered, or the giving of evidence touching the matter in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof. Such cases may be heard separately or together or by classes, by such boards as the Interstate Commerce Commission in the first instance, or any board of referees to which any such cases shall be referred may determine. Said boards shall give full hearings to such carriers and to the United States; shall consider all the facts and circumstances, and shall report as soon as practicable in each case to the President the just compensation, calculated on an annual basis and otherwise in such form as to be convenient and available for the making of such agreement as is authorized in section one. The President is authorized to enter into an agreement with such carrier for just compensation upon a basis not in excess of that reported by such board, and may include therein provisions similar to those authorized under section one. Failing such agreement, either the United States or such carrier may file a petition in the Court of Claims for the purpose of determining the amount of such just compensation, and in the proceedings in said court the report of said referees shall be prima facie evidence of the amount of just compensation and of the facts therein stated. Proceedings in the Court of Claims under this section shall be given precedence and expedited in every practicable way. [— *Stat. L.* —.]

SEC. 4. [Increase of compensation.] That the just compensation that may be determined as hereinbefore provided by agreement or that may be adjudicated by the Court of Claims, shall be increased by an amount reckoned at a reasonable rate per centum to be fixed by the President upon the cost of any additions and betterments, less retirements, and upon the cost of road extensions to the property of such carrier made by such carrier with the approval of or by order of the President while such property is under Federal control. [— *Stat. L.* —.]

SEC. 5. [Dividends.] That no carrier while under Federal control shall, without the prior approval of the President, declare or pay any dividend

in excess of its regular rate of dividends during the three years ended June thirtieth, nineteen hundred and seventeen: *Provided, however,* That such carriers as have paid no regular dividends or no dividends during said period may, with the prior approval of the President, pay dividends at such rate as the President may determine. [— *Stat. L.* —.]

SEC. 6. [Appropriation — expenditure — improvement of equipment, etc.— adjustment of losses — purchase of transportation facilities.] That the sum of \$500,000,000 is hereby appropriated, out of any moneys in the Treasury not otherwise appropriated, which, together with any funds available from any operating income of said carriers, may be used by the President as a revolving fund for the purpose of paying the expenses of the Federal control, and so far as necessary the amount of just compensation, and to provide terminals, motive power, cars, and other necessary equipment, such terminals, motive power, cars, and equipment to be used and accounted for as the President may direct and to be disposed of as Congress may hereafter by law provide.

The President may also make or order any carrier to make any additions, betterments, or road extensions, and to provide terminals, motive power, cars and other equipment necessary or desirable for war purposes or in the public interest on or in connection with the property of any carrier. He may from said revolving fund advance to such carrier all or any part of the expense of such additions, betterments, or road extensions, and to provide terminals, motive power, cars, and other necessary equipment so ordered and constructed by such carrier or by the President, such advances to be charged against such carrier and to bear interest at such rate and be payable on such terms as may be determined by the President, to the end that the United States may be fully reimbursed for any sums so advanced.

Any loss claimed by any carrier by reason of any such additions, betterments, or road extensions so ordered and constructed may be determined by agreement between the President and such carrier; failing such agreement the amount of such loss shall be ascertained as provided in section three hereof.

From said revolving fund the President may expend such an amount as he may deem necessary or desirable for the utilization and operation of canals, or for the purchase, construction, or utilization and operation of boats, barges, tugs, and other transportation facilities on the inland, canal, and coastwise waterways, and may in the operation and use of such facilities create or employ such agencies and enter into such contracts and agreements as he shall deem in the public interest. [— *Stat. L.* —.]

SEC. 7. [Bonds, etc.— issue — approval of President — purchase and sale by United States — annual reports.] That for the purpose of providing funds requisite for maturing obligations or for other legal and proper expenditures, or for reorganizing railroads in receivership, carriers may, during the period of Federal control, issue such bonds, notes, equipment trust certificates, stock, and other forms of securities, secured or unsecured by mortgage, as the President may first approve as consistent with the public interest. The President may, out of the revolving fund created by this Act, purchase for the United States all or any part of such

securities at prices not exceeding par, and may sell such securities whenever in his judgment it is desirable at prices not less than the cost thereof. Any securities so purchased shall be held by the Secretary of the Treasury, who shall, under the direction of the President, represent the United States in all matters in connection therewith in the same manner as a private holder thereof. The President shall each year as soon as practicable after January first, cause a detailed report to be submitted to the Congress of all receipts and expenditures made under this section and section six during the preceding calendar year. [— *Stat. L.* —.]

SEC. 8. [Authority of President — agencies.] That the President may execute any of the powers herein and heretofore granted him with relation to Federal control through such agencies as he may determine, and may fix the reasonable compensation for the performance of services in connection therewith, and may avail himself of the advice, assistance, and cooperation of the Interstate Commerce Commission and of the members and employees thereof, and may also call upon any department, commission, or board of the Government for such services as he may deem expedient. But no such official or employee of the United States shall receive any additional compensation for such services except as now permitted by law. [— *Stat. L.* —.]

SEC. 9. [Effect on former Act — application of Act.] That the provisions of the Act entitled "An Act making appropriations for the support of the Army for the fiscal year ending June thirtieth, nineteen hundred and seventeen, and for other purposes," approved August twenty-ninth, nineteen hundred and sixteen, shall remain in force and effect except as expressly modified and restricted by this Act; and the President, in addition to the powers conferred by this Act, shall have and is hereby given such other and further powers necessary or appropriate to give effect to the powers herein and heretofore conferred. The provisions of this Act shall also apply to any carriers to which Federal control may be hereafter extended. [— *Stat. L.* —.]

For the Act of Aug. 29, 1918, ch. 418, § 1, mentioned in the text, see WAR DEPARTMENT AND MILITARY ESTABLISHMENT.

SEC. 10. [Carriers under Federal control — liabilities — suits by or against — new rates, charges, classifications, etc.] That carriers while under Federal control shall be subject to all laws and liabilities as common carriers, whether arising under State or Federal laws or at common law, except in so far as may be inconsistent with the provisions of this Act or any other Act applicable to such Federal control or with any order of the President. Actions at law or suits in equity may be brought by and against such carriers and judgments rendered as now provided by law; and in any action at law or suit in equity against the carrier, no defense shall be made thereto upon the ground that the carrier is an instrumentality or agency of the Federal Government. Nor shall any such carrier be entitled to have transferred to a Federal court any action heretofore or hereafter instituted by or against it, which action was not so transferable prior to the Federal control of such carrier; and any action which has heretofore

been so transferred because of such Federal control or of any Act of Congress or official order or proclamation relating thereto shall upon motion of either party be retransferred to the court in which it was originally instituted. But no process, mesne or final, shall be levied against any property under such Federal control.

That during the period of Federal control, whenever in his opinion the public interest requires, the President may initiate rates, fares, charges, classifications, regulations, and practices by filing the same with the Interstate Commerce Commission, which said rates, fares, charges, classifications, regulations, and practices shall not be suspended by the commission pending final determination.

Said rates, fares, charges, classifications, regulations, and practices shall be reasonable and just and shall take effect at such time and upon such notice as he may direct, but the Interstate Commerce Commission shall, upon complaint, enter upon a hearing concerning the justness and reasonableness of so much of any order of the President as establishes or changes any rate, fare, charge, classification, regulation, or practice of any carrier under Federal control, and may consider all the facts and circumstances existing at the time of the making of the same. In determining any question concerning any such rates, fares, charges, classifications, regulations, or practices or changes therein, the Interstate Commerce Commission shall give due consideration to the fact that the transportation systems are being operated under a unified and coordinated national control and not in competition.

After full hearing the commission may make such findings and orders as are authorized by the Act to regulate commerce as amended, and said findings and orders shall be enforced as provided in said Act: *Provided, however,* That when the President shall find and certify to the Interstate Commerce Commission that in order to defray the expenses of Federal control and operation fairly chargeable to railway operating expenses, and also to pay railway tax accruals other than war taxes, net rents for joint facilities and equipment, and compensation to the carriers, operating as a unit, it is necessary to increase the railway operating revenues, the Interstate Commerce Commission in determining the justness and reasonableness of any rate, fare, charge, classification, regulation, or practice shall take into consideration said finding and certificate by the President, together with such recommendations as he may make. [— *Stat. L.* —.]

First paragraph construed.—The effect of the first paragraph of this section is to entirely suspend the right of issuing and levying executions, attachments, or other like process against the property of common carriers under federal control, during the continuance of such control; but it does not prevent a litigant from bringing his action against the latter in any court of competent jurisdiction, or such court from granting him such relief in the form of a judgment or otherwise, short of the coercive payment or satis-

faction of such judgment by the levy of an execution or other like process upon or against any property of the carrier, as the litigant might, but for the passage of the act, under the laws of the state of his residence, have been entitled to. In other words, he may, notwithstanding the act, bring his action and obtain judgment against the carrier; but he cannot enforce against the latter the satisfaction of the judgment, when obtained, by execution or similar process. *Louisville, etc., R. Co. v. Steel*, 202 S. W. 878.

SEC. 11. [Violation of Act—interference with use, etc., of property, etc.—violation of orders, etc.—penalty—embezzlement of funds, etc.—prosecutions.] That every person or corporation, whether carrier or ship-

per, or any receiver, trustee, lessee, agent, or person acting for or employed by a carrier or shipper, or other person, who shall knowingly violate or fail to observe any of the provisions of this Act, or shall knowingly interfere with or impede the possession, use, operation, or control of any railroad property, railroad, or transportation system hitherto or hereafter taken over by the President, or shall knowingly violate any of the provisions of any order or regulation made in pursuance of this Act, shall be guilty of a misdemeanor, and shall, upon conviction, be punished by a fine of not more than \$5,000, or, if a person, by imprisonment for not more than two years, or both. Each independent transaction constituting a violation of, or a failure to observe, any of the provisions of this Act, or any order entered in pursuance hereof, shall constitute a separate offense. For the taking or conversion to his own use or the embezzlement of money or property derived from or used in connection with the possession, use, or operation of said railroads or transportation systems, the criminal statutes of the United States, as well as the criminal statutes of the various States where applicable, shall apply to all officers, agents, and employees engaged in said railroad and transportation service, while the same is under Federal control, to the same extent as to persons employed in the regular service of the United States. Prosecutions for violations of this Act or of any order entered hereunder shall be in the district courts of the United States, under the direction of the Attorney General, in accordance with the procedure for the collection and imposing of fines and penalties now existing in said courts. [— *Stat. L.* —.]

SEC. 12. [Income derived from operation — disposition — disbursements — taxes.] That moneys and other property derived from the operation of the carriers during Federal control are hereby declared to be the property of the United States. Unless otherwise directed by the President, such moneys shall not be covered into the Treasury, but such moneys and property shall remain in the custody of the same officers, and the accounting thereof shall be in the same manner and form as before Federal control. Disbursements therefrom shall, without further appropriation, be made in the same manner as before Federal control and for such purposes as under the Interstate Commerce Commission classification of accounts in force on December twenty-seventh, nineteen hundred and seventeen, are chargeable to operating expenses or to railway tax accruals and for such other purposes in connection with Federal control as the President may direct, except that taxes under Titles One and Two of the Act entitled "An Act to provide revenue to defray war expenses, and for other purposes," approved October third, nineteen hundred and seventeen, or any Act in addition thereto or in amendment thereof, shall be paid by the carrier out of its own funds. If Federal control begins or ends during the tax year for which any taxes so chargeable to railway tax accruals are assessed, the taxes for such year shall be apportioned to the date of the beginning or ending of such Federal control, and disbursements shall be made only for that portion of such taxes as is due for the part of such tax year which falls within the period of Federal control.

At such periods as the President may direct, the books shall be closed and the balance of revenues over disbursements shall be covered into the

Treasury of the United States to the credit of the revolving fund created by this Act. If such revenues are insufficient to meet such disbursements, the deficit shall be paid out of such revolving fund in such manner as the President may direct. [— *Stat. L.* —.]

For the Act of Oct. 3, 1917, ch. —, Titles I and II, mentioned in the text, see *INTERNAL REVENUE*, *ante*, pp. 336, 341.

SEC. 13. [Determination of pending cases.] That all pending cases in the courts of the United States affecting railroads or other transportation systems brought under the Act to regulate commerce, approved February fourth, eighteen hundred and eighty-seven, as amended and supplemented, including the commodities clause, so called, or under the Act to protect trade and commerce against unlawful restraints and monopolies, approved July second, eighteen hundred and ninety, and amendments thereto, shall proceed to final determination as soon as may be, as if the United States had not assumed control of transportation systems; but in any such case the court having jurisdiction may, upon the application of the United States, stay execution of final judgment or decree until such time as it shall deem proper. [— *Stat. L.* —.]

For the Act of Feb. 4, 1887, ch. 104, mentioned in the text, see 3 Fed. Stat. Ann. 809, and for said Act as subsequently amended, including the commodities clause, see 4 Fed. Stat. Ann. (2d ed.) 337.

For the Sherman Act of July 2, 1890, ch. 647, mentioned in the text, see 7 Fed. Stat. Ann. 336; 9 Fed. Stat. Ann. (2d ed.) 642.

SEC. 14. [Duration of Federal control.] That the Federal control of railroads and transportation systems herein and heretofore provided for shall continue for and during the period of the war and for a reasonable time thereafter, which shall not exceed one year and nine months next following the date of the proclamation by the President of the exchange of ratifications of the treaty of peace: *Provided, however,* That the President may, prior to July first, nineteen hundred and eighteen, relinquish control of all or any part of any railroad or system of transportation, further Federal control of which the President shall deem not needful or desirable; and the President may at any time during the period of Federal control agree with the owners thereof to relinquish all or any part of any railroad or system of transportation. The President may relinquish all railroads and systems of transportation under Federal control at any time he shall deem such action needful or desirable. No right to compensation shall accrue to such owners from and after the date of relinquishment for the property so relinquished. [— *Stat. L.* —.]

SEC. 15. [Effect on existing laws or powers of States.] That nothing in this Act shall be construed to amend, repeal, impair, or affect the existing laws or powers of the States in relation to taxation or the lawful police regulations of the several States, except wherein such laws, powers, or regulations may affect the transportation of troops, war materials, Government supplies, or the issue of stocks and bonds. [— *Stat. L.* —.]

SEC. 16. [Act as emergency legislation — effect on future policy of government.] That this Act is expressly declared to be emergency legislation enacted to meet conditions growing out of war; and nothing herein is to be construed as expressing or prejudicing the future policy of the Federal Government concerning the ownership, control, or regulation of carriers or the method or basis of the capitalization thereof. [— Stat. L. —.]

RECLAMATION

See WATERS

RED CROSS

See CHARITIES; NATIONAL BANKS

REGISTRY AND RECORDING OF VESSELS

See SHIPPING AND NAVIGATION

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See *PENAL LAWS*

I. NAVIGABLE WATERS

SEC. 7. [Regulation for navigable waters or channel improvements — former Act amended.] That section four of the river and harbor Act of August eighteenth, eighteen hundred and ninety-four, as amended by section eleven of the river and harbor Act of June thirteenth, nineteen hundred and two, be, and is hereby, amended so as to read as follows:

“ SEC. 4. That it shall be the duty of the Secretary of War to prescribe such regulations for the use, administration, and navigation of the navigable waters of the United States as in his judgment the public necessity may require for the protection of life and property, or of operations of the United States in channel improvement, covering all matters not specifically delegated by law to some other executive department. Such regulations shall be posted, in conspicuous and appropriate places, for the information of the public; and every person and every corporation which shall violate such regulations shall be deemed guilty of a misdemeanor and, on conviction thereof in any district court of the United States within whose territorial jurisdiction such offense may have been committed, shall be punished by a fine not exceeding \$500, or by imprisonment (in the case of a natural person) not exceeding six months, in the discretion of the court.” [— *Stat. L.* —.]

The foregoing section 7 and the following sections 8, 15–17 are from the River and Harbor Appropriation Act of Aug. 8, 1917, ch. —.

For the Act of Aug. 18, 1894, ch. 299, § 4, as amended by the Act of June 13, 1902, ch. 1079, § 11, see 6 Fed. Stat. Ann. 792; 9 Fed. Stat. Ann. (2d ed.) 18.

SEC. 8. [Regulation for use and navigation of waters endangered by gunfire, mines, etc.] That, in the interest of the national defense and for the better protection of life and property on said waters, the Secretary of War is hereby authorized and empowered to prescribe such regulations as he may deem best for the use and navigation of any portion of areas of the navigable waters of the United States or waters under the jurisdiction of the United States endangered or likely to be endangered by Coast Artillery fire in target practice or otherwise, or by the proving operations of the Government ordnance proving ground at Sandy Hook, New Jersey, or at any Government ordnance proving ground that may be established elsewhere on or near such waters, and of any portion or area of said waters occupied by submarine mines, mine fields, submarine cables, or other

material and accessories pertaining to seacoast fortifications; and the said Secretary of War shall have like power to regulate the transportation of explosives upon any of said waters.

That to enforce the regulations prescribed pursuant to this section the Secretary of War may detail any public vessel in the service of the War Department, or, upon the request of the Secretary of War, the head of any other department may enforce, and the head of any such department is hereby authorized to enforce, such regulations by means of any public vessel of such department. [— *Stat. L.* —.]

See the note to the preceding section 7 of this Act.

SEC. 15. [Mosquito Creek, South Carolina — declared nonnavigable.] That Mosquito Creek, in Colleton County, South Carolina, be, and the same is hereby, declared to be a nonnavigable stream within the meaning of the Constitution and laws of the United States. [— *Stat. L.* —.]

See the note to section 7 of this Act, *supra*, p. 768.

SEC. 16. [Bayou Meto, Arkansas — declared nonnavigable.] That Bayou Meto, in the State of Arkansas, be, and the same is hereby, declared to be a nonnavigable stream within the meaning of the Constitution and laws of the United States. [— *Stat. L.* —.]

See the note to section 7 of this Act, *supra*, p. 768.

SEC. 17. [Saint Marys River, Ohio and Indiana — declared nonnavigable.] That Saint Marys River, Ohio and Indiana, be, and the same hereby is, declared to be a nonnavigable stream within the meaning of the Constitution and laws of the United States. [— *Stat. L.* —.]

See the note to section 7 of this Act, *supra*, p. 768.

II. IMPROVEMENTS

[**SEC. 1.] [Printing — payment — former Act repealed.]** * * * Section thirteen of the river and harbor appropriation Act approved July twenty-fifth, nineteen hundred and twelve, which authorizes the payment for printing of matter relating to river and harbor works from river and harbor appropriations, is repealed, and hereafter such printing shall be done and paid for out of regular annual appropriations for printing and binding for the War Department. [39 *Stat. L.* 330.]

This is from the Sundry Civil Appropriation Act of July 1, 1916, ch. 209.

For the Act of July 25, 1912, ch. 253, § 13, repealed by the text, see 1914 Supp. Fed. Stat. Ann. 369; 9 Fed. Stat. Ann. (2d ed.) 37.

SEC. 3. [Government dredging plant — construction or use.] That in all cases where the authorized project for a work of river or harbor improvement provides for the construction or use of Government dredging plant,

the Secretary of War may, in his discretion, have the work done by contract if reasonable prices can be obtained. [— *Stat. L.* —.]

This section and the following sections 4, 5, 9 and 13 are from the Rivers and Harbors Appropriation Act of Aug. 8, 1917, ch. —.

SEC. 4. [New government works — surveys — supplemental reports and estimates — Cape Cod Canal.] That no preliminary examination, survey, project, or estimate for new works other than those designated in this or some prior Act or joint resolution shall be made: *Provided further*, That after the regular or formal reports made as required by law on any examination, survey, project, or work under way or proposed are submitted no supplemental or additional report or estimate shall be made unless ordered by a concurrent resolution of Congress: *And provided further*, That the Government shall not be deemed to have entered upon any project for the improvement of any waterway or harbor mentioned in this Act until funds for the commencement of the proposed work shall have been actually appropriated by law.

* * * The Secretary of War is hereby authorized and directed to cause preliminary examinations and surveys to be made at the following-named localities, and a sufficient sum to pay the cost thereof may be allotted from the amount provided in this section: * * *

Waterway connecting Buzzards Bay and Cape Cod Bay, Massachusetts: The Secretary of War, the Secretary of the Navy, and the Secretary of Commerce are hereby authorized to examine and appraise the value of the works and franchises of the Cape Cod Canal, Massachusetts, connecting Buzzards and Cape Cod Bays, with reference to the advisability of the purchase of said canal by the United States and the construction over the route of the said canal of a free waterway, with or without a guard lock, and having a depth and capacity sufficient to accommodate the navigation interests that are affected thereby. This investigation shall be conducted under the direction of the Secretary of War and the supervision of the Chief of Engineers in the usual manner provided by law for making preliminary examinations and surveys except that the Secretary of War shall call upon the Secretary of the Navy and the Secretary of Commerce for such data and evidence as these Secretaries may wish to have incorporated in the report of survey, and further, that the final report of the investigation, with its conclusions upon probable cost and commercial advantages, and military and naval uses of the said canal, shall be submitted to the Secretary of War, the Secretary of the Navy, and the Secretary of Commerce for their action before it is transmitted to Congress.

If the said Secretaries are all in favor of the acquisition of the said canal, the Secretary of War is hereby further authorized to enter into negotiations for its purchase, including all property, franchises, and appurtenances used or acquired for use in connection therewith or appertaining thereto; and he is further authorized, if in the judgment of the Secretary of War, the Secretary of the Navy, and the Secretary of Commerce, that the price for such canal is reasonable and satisfactory, to make contracts for the purchase of the same, at the option of the United States, subject to future ratification and appropriation by the Congress; or, in the event of the inability of the Secretary of War to make a satisfactory contract for the

voluntary purchase of said Cape Cod Canal and its appurtenances, he is hereby authorized and directed, through the Attorney General, to institute and carry to completion proceedings for the condemnation of said canal and its appurtenances, the acceptance of the award in said proceedings to be subject to the future ratification and appropriation by Congress. Such condemnation proceedings shall be instituted and conducted in, and jurisdiction of said proceedings is hereby given to, the district court of the United States for the district of Massachusetts, substantially as provided in "An Act to authorize condemnation of land for sites for public buildings, and for other purposes," approved August first, eighteen hundred and eighty-eight; and the sum of \$5,000 is hereby appropriated to pay the necessary costs thereof and expenses in connection therewith. The Secretary of War is further authorized and directed to report the proceedings hereunder to Congress. [— *Stat. L.* —.]

See the note to section 3 of this Act, *supra*, p. 769.

For the Act of Aug. 1, 1888, ch. 728, mentioned in the text, see 6 Fed. Stat. Ann. 700; 8 Fed. Stat. Ann. (2d ed.) 1111.

SEC. 5. [Authorization to states of Minnesota, North and South Dakota — improvement of navigation — controlling floods.] That Congress hereby consents that the States of Minnesota, North Dakota, and South Dakota, or any two of them, may enter into any agreement or agreements with each other to aid in improving navigation and to prevent and control floods on boundary waters of said States and the waters tributary thereto. And said States, or any two of them, may agree with each other upon any project or projects for the purpose of making such improvements, and upon the amount of money to be contributed by each to carry out such projects. The Secretary of War is authorized and directed to make a survey of any project proposed, as aforesaid, by said States, or any two of them, to determine the feasibility and practicability thereof and the expenses of carrying the same into effect and what share of such expenses should be borne by the respective States, local interests, or by the National Government. If the Secretary of War approves any such projects, he may authorize the States to make such improvements at their own expense, but under his supervision. That the sum of \$25,000, or so much thereof as may be necessary, is hereby appropriated, out of any funds in the Treasury of the United States not otherwise appropriated, for the purpose of enabling the Secretary of War to make the surveys and estimates herein contemplated. [— *Stat. L.* —.]

See the note to section 3 of this Act, *supra*, p. 769.

SEC. 9. [Land or easement needed in work of harbor improvement — procurement — condemnation proceedings.] That whenever any State, or any reclamation, flood control or drainage district, or other public agency created by any State, shall undertake to secure any land or easement therein, needed in connection with a work of river and harbor improvement duly authorized by Congress, for the purpose of conveying the same to the United States free of cost, and shall be unable for any reason to obtain the same by purchase and acquire a valid title thereto, the Secretary of War may, in his discretion, cause proceedings to be instituted in the

name of the United States for the acquirement by condemnation of said land or easement, and it shall be the duty of the Attorney General of the United States to institute and conduct such proceedings upon the request of the Secretary of War: *Provided*, That all expenses of said proceedings and any award that may be made thereunder shall be paid by such State, or reclamation, flood control or drainage district, or other public agency as aforesaid, to secure which payment the Secretary of War may require such State, or reclamation, flood control or drainage district, or other public agency as aforesaid, to execute a proper bond in such amount as he may deem necessary before said proceedings are commenced. [— *Stat. L. —*.]

See the note to section 3 of this Act, *supra*, p. 769.

SEC. 13. [Rents from government plants—how disposed of.] That amounts hereafter paid by private parties or other agencies for rental of plant owned by the Government in connection with the prosecution of river and harbor works shall be deposited in each case to the credit of the appropriation to which the plant belongs. [— *Stat. L. —*.]

See the note to section 3 of this Act, *supra*, p. 769.

An Act Making appropriations for the construction, repair, and preservation of certain public works on rivers and harbors, and for other purposes.

[*Act of July 18, 1918, ch. —, —Stat. L. —*.]

SEC. 4. [Improvements—private contracts.] That no part of the funds herein or hereafter appropriated for works of river and harbor improvement shall be used to pay for any work done by private contract if the contract price is more than twenty-five per centum in excess of the estimated cost of doing the work by Government plant: *Provided*, That in estimating the cost of doing the work by Government plant, including the cost of labor and materials, there shall also be taken into account proper charges for depreciation of plant and all supervising and overhead expenses and interest on the capital invested in the Government plant, but the rate of interest shall not exceed the maximum prevailing rate being paid by the United States on current issues of bonds or other evidences of indebtedness. [— *Stat. L. —*.]

The sections preceding this section are omitted as temporary only.

SEC. 5. [Condemnation proceedings—possession—compensation—security.] That whenever the Secretary of War, in pursuance of authority conferred on him by law, causes proceedings to be instituted in the name of the United States for the acquirement by condemnation of any lands, easements, or rights of way needed for a work of river and harbor improvement duly authorized by Congress, the United States, upon the filing of the petition in any such proceedings, shall have the right to take immediate

possession of said lands, easements, or rights of way, to the extent of the interest to be acquired, and proceed with such public works thereon as have been authorized by Congress: *Provided*, That certain and adequate provision shall have been made for the payment of just compensation to the party or parties entitled thereto, either by previous appropriation by the United States or by the deposit of moneys or other form of security in such amount and form as shall be approved by the court in which such proceedings shall be instituted. The respondent or respondents may move at any time in the court to increase or change the amounts or securities, and the court shall make such order as shall be just in the premises and as shall adequately protect the respondents. In every case the proceedings in condemnation shall be diligently prosecuted on the part of the United States in order that such compensation may be promptly ascertained and paid. [— *Stat. L.* —]

SEC. 6. [Condemnation proceedings — compensation — benefits to land not taken.] That in all cases where private property shall be taken by the United States for the public use in connection with any improvement of rivers, harbors, canals, or waterways of the United States, and in all condemnation proceedings by the United States to acquire lands or easements for such improvements, where a part only of any such parcel, lot, or tract of land shall be taken, the jury or other tribunal awarding the just compensation or assessing the damages to the owner, whether for the value of the part taken or for any injury to the part not taken, shall take into consideration by way of reducing the amount of compensation or damages any special and direct benefits to the remainder arising from the improvement, and shall render their award or verdict accordingly. [— *Stat. L.* —]

SEC. 7. [Report of Chief of Engineers.] That hereafter the Chief of Engineers, United States Army, shall indicate in his annual reports the character of the terminal and transfer facilities existing on every harbor or waterway under maintenance or improvement by the United States, and state whether they are considered adequate for existing commerce. He shall also submit one or more special reports on this subject, as soon as possible, including, among other things, the following:

(a) A brief description of such water terminals, including location and the suitability of such terminals to the existing traffic conditions, and whether such terminals are publicly or privately owned, and the terms and conditions under which they may be subjected to public use.

(b) Whether such water terminals are connected by a belt or spur line of railroad with all the railroads serving the same territory or municipality, and whether such connecting railroad is owned by the public and the conditions upon which the same may be used, and also whether there is an interchange of traffic between the water carriers and the railroad or railroads as to such traffic which is carried partly by rail and partly by water to its destination, and also whether improved and adequate highways have been constructed connecting such water terminal with the other lines of railways.

(c) If no water terminals have been constructed by the municipality or other existing public agency there shall be included in his report an

expression of opinion in general terms as to the necessity, number, and appropriate location of such a terminal or terminals.

(d) An investigation of the general subject of water terminals, with descriptions and general plans of terminals of appropriate types and construction for the harbors and waterways of the United States suitable for various commercial purposes and adapted to the varying conditions of tides, floods, and other physical characteristics. [— *Stat. L.* —.]

SEC. 8. [Improvements — uncompleted contracts — modifications and readjustments.] That if the Secretary of War shall determine that any of the contracts for work of river and harbor improvements entered into but not completed prior to April sixth, nineteen hundred and seventeen, the date of the entrance of the United States into the war with Germany, have become inequitable and unjust on account of increased costs of materials and labor and the other unforeseen conditions arising out of the war, he is hereby authorized, in his discretion and with the consent of the contractors, to modify and readjust the terms of said contracts in such manner as he may deem equitable and just: *Provided*, That such modifications and readjustments shall apply only to work under said contracts remaining to be done hereafter and shall not include any relief for work performed heretofore under said contracts, and any such sum as may be necessary to provide for the increased cost of the contracts due to said modifications and readjustments, not exceeding the sum of \$2,000,000, is hereby appropriated out of any money in the Treasury not otherwise appropriated: *Provided further*, That as a condition of any such contract being so modified, the Secretary of War shall have the right, at the end of any fiscal year, until the contract is completed, to make such further modifications as in his judgment shall be advantageous to the United States and just to the contractor. [— *Stat. L.* —.]

SEC. 9. [Expenses of field work or travel on official business — how met — per diem.] That hereafter when the expenses of persons engaged in field work or traveling on official business outside of the District of Columbia and away from their designated posts of duty are chargeable to appropriations of the Engineer Department, a per diem of not exceeding \$4 may be allowed in lieu of subsistence when not otherwise fixed by law. [— *Stat. L.* —.]

III. MISSISSIPPI RIVER COMMISSION

[**SEC. 1.] [Mississippi River Commission — jurisdiction — extension — funds for improving river — expenditure.]** The jurisdiction of the Mississippi River Commission is hereby extended so as to include that part of the Arkansas River between its mouth and the intersection thereof with the division line between Lincoln and Jefferson Counties, and any funds which are herein or may be hereafter appropriated by Congress for improving the Mississippi River between Head of Passes and the mouth of the Ohio River, and which may be allotted to levees and bank revetment, may be expended within the limits of said extended jurisdiction under the direction of the Secretary of War, in accordance with the plans,

specifications, and recommendations of the Mississippi River Commission, as approved by the Chief of Engineers, and upon like terms and conditions for levees and bank revetment upon any part of the Mississippi River now under the jurisdiction of said commission, and in such manner as will best promote and accomplish the purposes for which commission was created, in so far as the territory hereby added to its said jurisdiction may be involved.

Any funds which are herein, or may hereafter be, appropriated by Congress for improving the Mississippi River between Head of Passes and the mouth of the Ohio River, and which may be allotted to levees, may be expended, under the direction of the Secretary of War, in accordance with the plans, specifications, and recommendations of the Mississippi River Commission, as approved by the Chief of Engineers, for levees upon any part of said river between Head of Passes and Rock Island, Illinois, in such manner as, in their opinion, shall best improve navigation and promote the interest of commerce at all stages of the river. [39 Stat. L. 402.]

This is from the Rivers and Harbors Appropriation Act of July 27, 1916, ch. 260.

IV. WATERWAYS COMMISSION

SEC. 18. [Waterways Commission — creation — members — duties.]

That a commission, to be known as the Waterways Commission, consisting of seven members to be appointed by the President of the United States, at least one of whom shall be chosen from the active or retired list of the Engineers Corps of the Army, at least one of whom shall be an expert hydraulic engineer from civil life, and the remaining five of whom may each be selected either from civil life or the public service, is hereby created and authorized, under such rules and regulations as the President may prescribe, and subject to the approval of the heads of the several executive departments concerned, to bring into coordination and cooperation the engineering, scientific, and constructive services, bureaus, boards, and commissions of the several governmental departments of the United States and commissions created by Congress that relate to study, development, or control of waterways and water resources and subjects related thereto, or to the development and regulation of interstate and foreign commerce, with a view to uniting such services in investigating, with respect to all watersheds in the United States, questions relating to the development, improvement, regulation, and control of navigation as a part of interstate and foreign commerce, including therein the related questions of irrigation, drainage, forestry, arid and swamp land reclamation, clarification of streams, regulation of flow, control of floods, utilization of water power, prevention of soil erosion and waste, storage, and conservation of water for agricultural, industrial, municipal, and domestic uses, cooperation of railways and waterways, and promotion of terminal and transfer facilities, to secure the necessary data, and to formulate and report to Congress, as early as practicable, a comprehensive plan or plans for the development of waterways and the water resources of the United States for the purposes of navigation and for every useful purpose, and recommendations for the modification or discontinuance of any project herein or heretofore

adopted. Any member appointed from the retired list shall receive the same pay and allowances as he would if on the active list, and no member selected from the public service shall receive additional compensation for services on said commission, and members selected from civil life shall receive compensation of \$7,500 per annum.

In all matters done, or to be done, under this section relating to any of the subjects, investigations, or questions to be considered hereunder and in formulating plans, and in the preparation of a report or reports, as herein provided, consideration shall be given to all matters which are to be undertaken, either independently by the United States or by cooperation between the United States and the several States, political subdivisions thereof, municipalities, communities, corporations, and individuals within the jurisdiction, powers, and rights of each, respectively, and with a view to assigning to the United States such portion of such development, promotion, regulation, and control as may be undertaken by the United States, and to the States, political subdivisions thereof, municipalities, communities, corporations, and individuals such portions as belong to their respective jurisdictions, rights, and interests.

The commission is authorized to employ or retain, and fix the compensation for the services of such engineers, transportation experts, experts in water development and utilization, and constructors of eminence as it may deem necessary to make such investigations and to carry out the purposes of this section. And in order to defray the expenses made necessary by the provisions of this section there is hereby authorized to be appropriated such sums as Congress may hereafter determine, and the sum of \$100,000 is hereby appropriated, available until expended, to be paid out upon warrants drawn on the Secretary of the Treasury by the chairman of said commission.

The commission shall have power to make every expenditure requisite for and incident to its authorized work, and to employ in the District of Columbia and in the field such clerical, legal, engineering, artistic, and expert services as it may deem advisable, including the payment of per diem in lieu of subsistence for employees engaged in field work or traveling on official business, rent of offices in the District of Columbia and in the field, and the purchase of books, maps, and office equipment.

Nothing herein contained shall be construed to delay, prevent, or interfere with the completion of any survey, investigation, project, or work herein or heretofore or hereafter adopted or authorized upon or for the improvement of any of the rivers or harbors of the United States or with legislative action upon reports heretofore or hereafter presented. [*— Stat. L. —.*]

This is from the Rivers and Harbors Appropriation Act of Aug. 8, 1917, ch. —.

V. PANAMA CANAL AND CANAL ZONE

[SEC. 1.] [Canal Zone — expenditures from sale of bonds.] * * *

That all expenditures from the appropriations heretofore herein, and hereafter made for the construction of the Panama Canal, including any portion of such appropriations which may be used for the construction of dry docks,

repair shops, yards, docks, wharves, warehouses, storehouses, and other necessary facilities and appurtenances, for the purpose of providing coal and other materials, labor, repairs, and supplies, for the construction of office buildings, and quarters, and other necessary buildings, exclusive of fortifications, colliers, dock six at Cristobal, and reboiling of steamships "Ancon" and "Cristobal," which steamships shall not be transferred to the Secretary of the Navy, as provided in the Act of May twenty-seventh, nineteen hundred and eight, and exclusive of the fair value of the American legation building in Panama, as approved by the Secretary of War and Secretary of State, which building is authorized to be transferred without charge to the jurisdiction of the Secretary of State, and exclusive of the amount used for operating and maintaining the canal, and exclusive of the amount expended for sanitation and civil government after January first, nineteen hundred and fifteen, may be paid from or reimbursed to the Treasury of the United States out of the proceeds of the sale of bonds authorized in section eight of the said Act approved June twenty-eighth, nineteen hundred and two, and section thirty-nine of the tariff Act approved August fifth, nineteen hundred and nine. [39 Stat. L. 334.]

The foregoing provisions of section 1 and the following section 2 are from the Sundry Civil Appropriation Act of July 1, 1916, ch. 209.

For the Act of June 28, 1902, ch. 1302, § 8, mentioned in the text, see 6 Fed. Stat. Ann. 838; 8 Fed. Stat. Ann. (2d ed.) 416.

For the Tariff Act of Aug. 5, 1909, ch. 6, § 39, mentioned in the text, see 1909 Supp. Fed. Stat. Ann. 834; 8 Fed. Stat. Ann. (2d ed.) 417.

The Sundry Civil Appropriation Act of May 27, 1908, ch. 200, § 1, 35 Stat. L. 385, mentioned in the text, provided for the purchase of two steamships, which should be transferred to the Secretary of the Navy when no longer needed in the construction of the Panama Canal.

[SEC. 2.] [Panama Canal — Joint Land Commission — jurisdiction.]

That the Joint Land Commission established under article fifteen of the treaty between the United States and the Republic of Panama, proclaimed February twenty-sixth, nineteen hundred and four, shall not have jurisdiction to adjudicate or settle any claim originating under any lease or contract for occupancy heretofore or hereafter made by the Panama Railroad Company of lands or property owned by said Panama Railroad Company in the Canal Zone, and no part of the moneys appropriated by this or any other Act shall be used to pay such claims. [39 Stat. L. 336.]

See the note to the preceding section 1 of this Act.

Article XV of the treaty mentioned in the text is given in 33 Stat. L. 2238.

An Act Extending certain privileges of canal employees to other officials on the Canal Zone and authorizing the President to make rules and regulations affecting health, sanitation, quarantine, taxation, public roads, self-propelled vehicles, and police powers on the Canal Zone, and for other purposes, including provision as to certain fees, money orders, and interest deposits.

[Act of Aug. 21, 1916, ch. 371, 39 Stat. L. 527.]

[SEC. 1.] Canal Zone — health and quarantine.] That, until otherwise provided by Congress, the President is authorized to make rules and regula-

tions in matters of sanitation, health, and quarantine for the Canal Zone or to modify or change existing rules and regulations and those hereafter made from time to time. Violations of any quarantine regulations provided for herein shall be punished by fine not to exceed \$500 or by imprisonment in jail not to exceed ninety days, or by both such fine and imprisonment, in the court's discretion; and a violation of any sanitary regulations hereunder shall be punished by a fine not to exceed \$25 or by imprisonment in jail not to exceed thirty days, or by both such fine and imprisonment, in the court's discretion. Each day such violation may continue shall constitute a separate offense. [39 Stat. L. 527.]

SEC. 2. [Taxes — collection — amount.] That, until otherwise provided by Congress, the President is hereby authorized to make and from time to time change rules and regulations for levying, assessing, and collecting ad valorem, excise, license, and franchise taxes in the Canal Zone, or to modify or change existing rules or regulations for that purpose. Ad valorem taxes imposed shall not exceed one per centum of the value of the property, nor shall franchise or excise taxes exceed two per centum of gross earnings. [39 Stat. L. 528.]

SEC. 3. [Roads and highways — use.] That, until otherwise provided by Congress, it shall be lawful for the President to make, publish, and enforce all rules and regulations for the use of the public roads and highways in the Canal Zone, and also for regulating, licensing, and taxing the use and operation of all self-propelled vehicles using the public highways, including speed limit, signals, tags, license fees, and all detailed regulations which may be from time to time deemed necessary in the exercise of the authority hereby conferred. The taxes on automobiles may be graded according to the value or the power of the machine, and such rules and regulations as now exist may be changed by such order from time to time, and any that may be hereafter made be changed from time to time. The President may make mutual agreements with the Republic of Panama touching the reciprocal use of the highways of the Canal Zone and the Republic of Panama by self-propelled vehicles touching taxes and license fees, and any other matter of regulation to establish comity for the convenience of the residents of the two jurisdictions. [39 Stat. L. 528.]

SEC. 4. [Breaches of peace, etc.— police power.] That it shall be unlawful to commit any breach of the peace or engage in or permit any disorderly, indecent, or immoral conduct in the Canal Zone. The President is authorized to enforce this provision by making rules and regulations to assert and exercise the police power in the Canal Zone, or for any portion or division thereof, and he may amend or change any such regulation now existing or hereafter made. [39 Stat. L. 528.]

SEC. 5. [Violations of rules and regulations — punishment.] That any person who commits any act or who carries on any business, trade, or occupation in the Canal Zone without complying with the rules and regulations established by the President for the levying, assessing, and collecting

of taxes, or who violates any rules or regulations for the use of the public roads and highways, or who violates any rules and regulations touching the licensing, taxes, operation, and use of self-propelled vehicles, or who violates any of the police regulations authorized hereunder, shall be punished by fine not to exceed \$25 or by imprisonment in jail not to exceed thirty days, or by both such fine and imprisonment, in the court's discretion. [39 Stat. L. 528.]

SEC. 6. [Deposit money orders — interest.] That deposit money orders issued in the Canal Zone in lieu of postal savings certificates in accordance with the rules and regulations heretofore established by the President, or that may hereafter be established by him, shall bear interest at a rate not exceeding two per centum per annum. [39 Stat. L. 528.]

SEC. 7. [Interest from money-order funds — use.] That the interest received from the Canal Zone money-order funds deposited in banks under Canal Zone regulations shall be available to pay the interest on deposit money orders authorized by the preceding section. Such interest shall also be available to pay any losses which are chargeable to the Canal Zone postal service. [39 Stat. L. 528.]

SEC. 8. [Fees of customs officers.] That whenever a customs officer of the Canal Zone shall certify an invoice, landing certificate, or other similar document, or shall register a marine note of protest, or shall perform any notarial services, he shall be authorized to collect a fee equivalent to the fee prescribed by the United States consular regulations for the same act or service when performed by consular officials. [39 Stat. L. 528.]

SEC. 9. [Laws relating to seamen.] The laws relating to seamen of vessels of the United States on foreign voyages shall apply to seamen of all vessels of the United States at the Panama Canal Zone, whether such vessels be registered or enrolled and licensed, and the powers in respect of such seamen of such vessels bestowed by law upon consular officers of the United States in foreign ports and upon shipping commissioners in ports of the United States are hereby bestowed upon the shipping commissioner and deputy shipping commissioners on the Panama Canal Zone. [39 Stat. L. 529.]

SEC. 10. [Rules affecting right of persons to enter and remain in Canal Zone — authority to make — violations.] The President is hereby authorized to make rules and regulations, and to alter or amend the same from time to time, touching the right of any person to enter or remain upon or pass over any part of the Canal Zone; for the detention of any person entering the Canal Zone in violation of such rules and regulations, and return of such person to the country whence he or she came, on the vessel bringing such person to the Canal Zone, or any other vessel belonging to the same owner or interest, and at the expense of such owner or interest; and in addition to the punishment prescribed by this section for violation of any such rules and regulations, the authorities of the Canal Zone may

withhold the clearance of such vessel from any port in the Canal Zone until any fine imposed and the cost of maintenance of such person are paid. Any person violating any of such rules or regulations shall be guilty of a misdemeanor, and on conviction in the district court of the Canal Zone shall be punished by a fine not exceeding \$500 or by imprisonment not exceeding a year, or both in the discretion of the court. It shall be unlawful for any person, by any means or in any way, to injure or obstruct or attempt to injure or obstruct, any part of the Panama Canal or the locks thereof or the approaches thereto. Any person violating this provision shall be guilty of a felony, and on conviction in the district court of the Canal Zone shall be punished by a fine not exceeding \$10,000 or by imprisonment not exceeding twenty years, or both, in the discretion of the court. If the act shall cause the death of any person within a year and a day thereafter, the person so convicted shall be guilty of murder and shall be punished accordingly. [39 Stat. L. 529.]

SEC. 11. [Repeal of conflicting laws.] That all laws, orders, or ordinances in conflict with this Act are hereby repealed. [39 Stat. L. 529.]

[SEC. 1.] [Panama Canal — tolls — refund.] * * * There is appropriated, out of any money hereafter received as tolls, before such money is covered into the Treasury as miscellaneous receipts, amounts necessary to refund to the parties entitled thereto amounts which heretofore or may hereafter be erroneously received as tolls and covered into the Treasury as miscellaneous receipts. [— Stat. L. —.]

This is from the Civil Sundry Appropriation Act of June 12, 1917, ch. —.

VI. MISCELLANEOUS

[SEC. 1.] * * * [Chesapeake and Delaware Canal — purchase by government.] The Secretary of War is hereby authorized to enter into negotiations for the purchase of the existing Chesapeake and Delaware Canal, and all the property, rights of property, franchises, and appurtenances used or acquired for use in connection therewith or appertaining thereto; and he is further authorized, if in his judgment the price is reasonable and satisfactory, to make a contract for the purchase of the same, subject to future ratification and appropriation by Congress. In the event of the inability of the Secretary of War to make a satisfactory contract for the voluntary purchase of said canal and its appurtenances, he is hereby authorized and directed through the Attorney General to institute and to carry to completion proceedings for the condemnation of the said canal and its appurtenances, the acceptance of the award in said proceedings to be subject to future ratification and appropriation by Congress. Such condemnation proceedings shall be instituted and conducted in, and jurisdiction of said proceedings is hereby given to, the District Court of the United States for the District of Delaware substantially as provided in

"An Act to authorize condemnation of land for sites for public buildings, and for other purposes," approved August first, eighteen hundred and eighty-eight. [— *Stat. L.* —.]

The foregoing part of section 1 and the following sections 3-5, 9 and 13 are from the Rivers and Harbors Appropriation Act of Aug. 8, 1917, ch. —.

For the Act of Aug. 1, 1888, ch. 728, mentioned in the text, see 6 Fed. Stat. Ann. 700; 8 Fed. Stat. Ann. (2d ed.) 1111, ..

ROADS

See POSTAL SERVICE.

RURAL CREDITS

See AGRICULTURE.

ST. ELIZABETH'S HOSPITAL

See HOSPITALS AND ASYLUMS.

SALVAGE

Act of July 1, 1918, ch. —, 781.

Salvage by Naval Vessels — Compensation, 781.

[Salvage by naval vessels — compensation.] * * * That hereafter the Secretary of the Navy is authorized to cause vessels under his control adapted to the purpose, to afford salvage service to public or private vessels in distress: *Provided*, That when such salvage service is rendered by a vessel specially equipped for the purpose or by a tug, the Secretary of the Navy may determine and collect reasonable compensation therefor. [— *Stat. L.* —.]

This is from the Naval Appropriation Act of July 1, 1918, ch. —.

SEALS

Counterfeiting or use of Government Seal to Defraud, see CRIMINAL LAW.

SEAMEN

Act of June 12, 1916, ch. 141, 782.

Life-Saving Appliances—Life Buoys—Former Act Amended, 782.

CROSS-REFERENCE

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An Act To amend section fourteen of the seamen's Act of March fourth, nineteen hundred and fifteen.

[Act of June 12, 1916, ch. 141, 39 Stat. L. 224.]

[Life-saving appliances—life buoys—former Act amended.] That section fourteen of the seamen's Act of March fourth, nineteen hundred and fifteen, be amended by striking out subdivisions third and fourth of subsection headed "Life jackets and life buoys," regarding the number of life buoys with which steamers navigating the ocean, or any lake, bay, or sound of the United States shall be equipped, and inserting, in lieu thereof, the following:

"Third. The minimum number of life buoys with which vessels are to be provided is fixed as follows:

"Vessels under one hundred feet in length, minimum number of buoys, two; vessels one hundred feet and less than two hundred feet in length, minimum number of buoys, four, of which two shall be luminous; vessels two hundred feet and less than three hundred feet in length, minimum number of buoys, six, of which two shall be luminous; vessels three hundred feet and less than four hundred feet in length, minimum number of buoys, twelve, of which four shall be luminous; vessels four hundred feet and less than six hundred feet in length, minimum number of buoys, eighteen, of which nine shall be luminous; vessels six hundred feet and less than eight hundred feet in length, minimum number of buoys, twenty-four, of which twelve shall be luminous; vessels eight hundred feet and over in length, minimum number of buoys, thirty, of which fifteen shall be luminous.

"Fourth. All the buoys shall be fitted with beackets securely seized. Where two buoys only are carried, one shall be fitted with a life line at least fifteen fathoms in length, and where more than two buoys are carried, at least one buoy on each side shall be fitted with a life line of at least fifteen fathoms in length. The lights shall be efficient self-igniting lights which cannot be extinguished in water and they shall be kept near the buoys to which they belong, with the necessary means of attachment." *[39 Stat. L. 224.]*

For the Act of March 4, 1915, ch. 153, § 14, amended by this Act, see 1916 Supp. Fed. Stat. Ann. 234; 9 Fed. Stat. Ann. (2d ed.) 479.

SEARCH WARRANTS

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SEIZURE OF VESSELS

See SHIPPING AND NAVIGATION.

SHIPPING AND NAVIGATION

Act of Sept. 7, 1916, ch. 451, 785.

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See also EMINENT DOMAIN; EXECUTIVE DEPARTMENTS: IMPORTS AND EXPORTS; PENAL LAWS; SALVAGE; STEAM VESSELS; TRADING WITH THE ENEMY.

An Act To establish a United States Shipping Board for the purpose of encouraging, developing, and creating a naval auxiliary and naval reserve and a merchant marine to meet the requirements of the commerce of the United States with its Territories and possessions and with foreign countries; to regulate carriers by water engaged in the foreign and interstate commerce of the United States; and for other purposes.

[Act of Sept. 7, 1916, ch. 451, 39 Stat. L. 728.]

[SEC. 1.] [United States Shipping Board Act — definitions — “common carrier by water in foreign commerce” — “common carrier by water in interstate commerce” — “common carrier by water” — “other persons subject to this Act” — “person” — “vessel” — “documented under the laws of the United States.”] That when used in this Act:

The term “common carrier by water in foreign commerce” means a common carrier, except ferryboats running on regular routes, engaged in the transportation by water of passengers or property between the United States or any of its Districts, Territories, or possessions and a foreign country, whether in the import or export trade: *Provided*, That a cargo boat commonly called an ocean tramp shall not be deemed such “common carrier by water in foreign commerce.”

The term “common carrier by water in interstate commerce” means a common carrier engaged in the transportation by water of passengers or property on the high seas or the Great Lakes on regular routes from port to port between one State, Territory, District, or possession of the United States and any other State, Territory, District, or possession of the United States, or between places in the same Territory, District, or possession.

The term “common carrier by water” means a common carrier by water in foreign commerce or a common carrier by water in interstate commerce on the high seas or the Great Lakes on regular routes from port to port.

The term "other person subject to this Act" means any person not included in the term "common carrier by water," carrying on the business of forwarding or furnishing wharfage, dock, warehouse, or other terminal facilities in connection with a common carrier by water.

The term "person" includes corporations, partnerships, and associations, existing under or authorized by the laws of the United States, or any State, Territory, District, or possession thereof, or of any foreign country.

The term "vessel" includes all water craft and other artificial contrivances of whatever description and at whatever stage of construction, whether on the stocks or launched, which are used or are capable of being or are intended to be used as a means of transportation on water.

The term "documented under the laws of the United States," means registered, enrolled, or licensed under the laws of the United States. [39 Stat. L. 728 as amended by — Stat. L. —.]

The last two paragraphs of this section were added by the Act of July 15, 1918, ch. —, § 1.

SEC. 2. [Corporation, etc., as citizen — applicability of Act to receivers and trustees — controlling interest in corporation — alien ownership.] That within the meaning of this Act no corporation, partnership, or association shall be deemed a citizen of the United States unless the controlling interest therein is owned by citizens of the United States, and, in the case of a corporation, unless its president and managing directors are citizens of the United States and the corporation itself is organized under the laws of the United States or of a State, Territory, District, or possession thereof.

The provisions of this Act shall apply to receivers and trustees of all persons to whom the Act applies, and to the successors or assignees of such persons.

The controlling interest in a corporation shall not be deemed to be owned by citizens of the United States (a) if the title to a majority of the stock thereof is not vested in such citizens free from any trust or fiduciary obligation in favor of any person not a citizen of the United States; or (b) if the majority of the voting power in such corporation is not vested in citizens of the United States; or (c) if through any contract or understanding it is so arranged that the majority of the voting power may be exercised, directly or indirectly, in behalf of any person who is not a citizen of the United States; or (d) if by any other means whatsoever control of the corporation is conferred upon or permitted to be exercised by any person who is not a citizen of the United States. [39 Stat. L. 729 as amended by — Stat. L. —.]

This section was amended to read as given in the text by the Act of July 15, 1918, ch. —, § 2, the amendment consisting in the addition of the last paragraph relating to the controlling interest in corporations.

SEC. 3. [United States Shipping Board created — membership — official seal — rules and regulations.] That a board is hereby created, to be known as the United States Shipping Board, and hereinafter referred to as the board. The board shall be composed of five commissioners, to be appointed by the President, by and with the advice and consent of the Senate; said board shall annually elect one of its members as chairman and one as vice chairman.

The first commissioners appointed shall continue in office for terms of two, three, four, five, and six years, respectively, from the date of their appointment, the term of each to be designated by the President, but their successors shall be appointed for terms of six years, except that any person chosen to fill a vacancy shall be appointed only for the unexpired term of the commissioner whom he succeeds.

The commissioners shall be appointed with due regard to their fitness for the efficient discharge of the duties imposed on them by this Act, and to a fair representation of the geographical divisions of the country. Not more than three of the commissioners shall be appointed from the same political party. No commissioner shall be in the employ of or hold any official relation to any common carrier by water or other person subject to this Act, or own any stocks or bonds thereof, or be pecuniarily interested therein. No commissioner shall actively engage in any other business, vocation, or employment. Any commissioner may be removed by the President for inefficiency, neglect of duty, or malfeasance in office. A vacancy in the board shall not impair the right of the remaining members of the board to exercise all its powers. The board shall have an official seal, which shall be judicially noticed.

The board may adopt rules and regulations in regard to its procedure and the conduct of its business. [39 Stat. L. 729.]

SEC. 4. [Salaries of members and employees — expenses — offices — auditing accounts.] That each member of the board shall receive a salary of \$7,500 per annum. The board shall appoint a secretary, at a salary of \$5,000 per annum, and employ and fix the compensation of such attorneys, officers, naval architects, special experts, examiners, clerks, and other employees as it may find necessary for the proper performance of its duties and as may be appropriated for by the Congress. The President, upon the request of the board, may authorize the detail of officers of the military, naval, or other services of the United States for such duties as the board may deem necessary in connection with its business.

With the exception of the secretary, a clerk to each commissioner, the attorneys, naval architects, and such special experts and examiners as the board may from time to time find necessary to employ for the conduct of its work, all employees of the board shall be appointed from lists of eligibles to be supplied by the Civil Service Commission and in accordance with the civil-service law.

The expenses of the board, including necessary expenses for transportation, incurred by the members of the board or by its employees under its orders, in making any investigation, or upon official business in any other place than in the city of Washington, shall be allowed and paid on the presentation of itemized vouchers therefor approved by the chairman of the board.

Until otherwise provided by law the board may rent suitable offices for its use.

The Auditor for the State and Other Departments shall receive and examine all accounts of expenditures of the board. [39 Stat. L. 729.]

SEC. 5. [Authority of board to construct, etc., vessels.] That the board, with the approval of the President, is authorized to have constructed and

equipped in American shipyards and navy yards or elsewhere, giving preference, other things being equal, to domestic yards, or to purchase, lease, or charter, vessels suitable as far as the commercial requirements of the marine trade of the United States may permit, for use as naval auxiliaries or Army transports, or for other naval or military purposes, and to make necessary repairs on and alterations of such vessels: *Provided*, That neither the board nor any corporation formed under section eleven in which the United States is then a stockholder shall purchase, lease, or charter any vessel —

(a) Which is then engaged in the foreign or domestic commerce of the United States, unless it is about to be withdrawn from such commerce without any intention on the part of the owner to return it thereto within a reasonable time;

(b) Which is under the registry or flag or [of] a foreign country which is then engaged in war;

(c) Which is not adapted, or can not by reasonable alterations and repairs be adapted, to the purpose specified in this section;

(d) Which, upon expert examination made under the direction of the board, a written report of such examination being filed as a public record, is not without alteration or repair found to be at least seventy-five per centum as efficient as at the time it was originally put in commission as a seaworthy vessel. [39 Stat. L. 730.]

SEC. 6. [Transfer of vessels to board by President.] That the President may transfer either permanently or for limited periods to the board such vessels belonging to the War or Navy Department as are suitable for commercial uses and not required for military or naval use in time of peace, and cause to be transferred to the board vessels owned by the Panama Railroad Company and not required in its business. [39 Stat. L. 730.]

SEC. 7. [Authority of board to charter, etc., vessels to citizens.] That the board, upon terms and conditions prescribed by it and approved by the President, may charter, lease, or sell to any person, a citizen of the United States, any vessel so purchased, constructed, or transferred. [39 Stat. L. 730.]

SEC. 8. [Sale of vessels unsuited to purposes of Act.] That when any vessel purchased or constructed by or transferred to the board as herein provided, and owned by the United States, becomes, in the opinion of the board, unfit for the purposes of this Act, it shall be appraised and sold at public or private competitive sale after due advertisement free from the conditions and restrictions of this Act. [39 Stat. L. 730.]

SEC. 9. [Registry, etc., of vessels — transfers, sales, etc.—penalty.] That any vessel purchased, chartered, or leased from the board may be registered or enrolled and licensed, or both registered and enrolled and licensed, as a vessel of the United States and entitled to the benefits and privileges appertaining thereto: *Provided*, That foreign-built vessels admitted to American registry or enrollment and license under this Act, and vessels owned, chartered, or leased by any corporation in which the

United States is a stockholder, and vessels sold, leased, or chartered to any person a citizen of the United States, as provided in this Act, may engage in the coastwise trade of the United States while owned, leased, or chartered by such a person.

Every vessel purchased, chartered, or leased from the board shall, unless otherwise authorized by the board, be operated only under such registry or enrollment and license. Such vessels while employed solely as merchant vessels shall be subject to all laws, regulations, and liabilities governing merchant vessels, whether the United States be interested therein as owner, in whole or in part, or hold any mortgage, lien, or other interest therein. No such vessel, without the approval of the board, shall be transferred to a foreign registry or flag, or sold; nor, except under regulations prescribed by the board, be chartered or leased.

No vessel documented under the laws of the United States or owned by any person a citizen of the United States or by a corporation organized under the laws of the United States or of any State, Territory, District, or possession thereof, except one which the board is prohibited from purchasing, shall be sold to any person not a citizen of the United States or transferred to or placed under a foreign registry or flag, unless such vessel is first tendered to the board at the price in good faith offered by others, or, if no such offer, at a fair price to be determined in the manner provided in section ten.

Any vessel sold, chartered, leased, transferred to or placed under a foreign registry or flag, or operated, in violation of any provision of this section shall be forfeited to the United States, and whoever violates any provision of this section shall be guilty of a misdemeanor and subject to a fine of not more than \$5,000 or to imprisonment for not more than five years, or both. [39 Stat. L. 730, as amended by — Stat. L. —.]

This section was amended to read as given in the text by the Act of July 15, 1918, ch. —, § 3. As originally enacted it was as follows:

"SEC. 9. That any vessel purchased, chartered, or leased from the board may be registered or enrolled and licensed, or both registered and enrolled and licensed, as a vessel of the United States and entitled to the benefits and privileges appertaining thereto: *Provided*, That foreign-built vessels admitted to American registry or enrollment and license under this Act, and vessels owned, chartered, or leased by any corporation to which the United States is a stockholder, and vessels sold, leased, or chartered to any person a citizen of the United States, as provided in this Act, may engage in the coastwise trade of the United States.

"Every vessel purchased, chartered, or leased from the board shall, unless otherwise authorized by the board, be operated only under such registry or enrollment and license. Such vessels while employed solely as merchant vessels shall be subject to all laws, regulations, and liabilities governing merchant vessels, whether the United States be interested therein as owner, in whole or in part, or hold any mortgage, lien, or other interest therein. No such vessel, without the approval of the board, shall be transferred to a foreign registry or flag, or sold; nor, except under regulations prescribed by the board, be chartered or leased.

"When the United States is at war, or during any national emergency the existence of which is declared by proclamation of the President, no vessel registered or enrolled and licensed under the laws of the United States shall, without the approval of the board, be sold, leased, or chartered to any person not a citizen of the United States, or transferred to a foreign registry or flag. No vessel registered or enrolled and licensed under the laws of the United States, or owned by any person a citizen of the United States, except one which the board is prohibited from purchasing, shall be sold to any person not a citizen of the United States or transferred to a foreign registry or flag, unless such vessel is first tendered to the board at the price in good faith offered by others, or, if no such offer, at a fair price to be determined in the manner provided in section ten.

"Any vessel sold, chartered, leased, transferred, or operated in violation of this section shall be forfeited to the United States, and whoever violates any provision of this section shall be guilty of a misdemeanor and subject to a fine of not more than \$5,000 or to imprisonment of not more than five years, or both such fine and imprisonment."

"Employed solely as a merchant vessel," as used in the second paragraph of this section, is applicable to a vessel chartered to the French Government by the United States Shipping Board Emergency

Fleet Corporation, and carrying a cargo of food for that government, and such vessel is subject to libel if it collides with a British vessel on the high seas. The *Florence H.*, 248 Fed. 1012.

SEC. 10. [Authority of President to take possession of vessels purchased, etc., from board for naval, etc., purposes — compensation.] That the President, upon giving to the person interested such reasonable notice in writing as in his judgment the circumstances permit, may take possession, absolutely or temporarily, for any naval or military purpose of any vessel purchased, leased, or chartered from the board: *Provided*, That if, in the judgment of the President, an emergency exists requiring such action he may take possession of any such vessel without notice.

Thereafter, upon ascertainment by agreement or otherwise, the United States shall pay the person interested the fair actual value based upon normal conditions at the time of taking of the interest of such person in every vessel taken absolutely, or if taken for a limited period, the fair charter value under normal conditions for such period. In case of disagreement as to such fair value it shall be determined by appraisers, one to be appointed by the board, one by the person interested, and a third by the two so appointed. The finding of such appraisers shall be final and binding upon both parties. [39 Stat. L. 731.]

SEC. 11. [Formation of corporations by board for purchase, etc., of merchant vessels — conditions precedent to operation.] That the board, if in its judgment such action is necessary to carry out the purposes of this Act, may form under the laws of the District of Columbia one or more corporations for the purchase, construction, equipment, lease, charter, maintenance, and operation of merchant vessels in the commerce of the United States. The total capital stock thereof shall not exceed \$50,000,000. The board may, for and on behalf of the United States, subscribe to, purchase, and vote not less than a majority of the capital stock of any such corporation, and do all other things in regard thereto necessary to protect the interests of the United States and to carry out the purposes of this Act. The board, with the approval of the President, may sell any or all of the stock of the United States in such corporation, but at no time shall it be a minority stockholder therein: *Provided*, That no corporation in which the United States is a stockholder, formed under the authority of this section, shall engage in the operation of any vessel constructed, purchased, leased, chartered, or transferred under the authority of this Act unless the board shall be unable, after a bona fide effort, to contract with any person a citizen of the United States for the purchase, lease, or charter of such vessel under such terms and conditions as may be prescribed by the board.

The board shall give public notice of the fact that vessels are offered and the terms and conditions upon which a contract will be made, and

shall invite competitive offerings. In the event the board shall, after full compliance with the terms of this proviso, determine that it is unable to enter into a contract with such private parties for the purchase, lease, or charter of such vessel, it shall make a full report to the President, who shall examine such report, and if he shall approve the same he shall make an order declaring that the conditions have been found to exist which justify the operation of such vessel by a corporation formed under the provisions of this section.

At the expiration of five years from the conclusion of the present European war the operation of vessels on the part of any such corporation in which the United States is then a stockholder shall cease and the said corporation stand dissolved. The date of the conclusion of the war shall be declared by proclamation of the President. The vessels and other property of any such corporation shall revert to the board. The board may sell, lease, or charter such vessels as provided in section seven and shall dispose of the property other than vessels on the best available terms and, after payment of all debts and obligations, deposit the proceeds thereof in the Treasury to its credit. All stock in such corporations owned by others than the United States at the time of dissolution shall be taken over by the board at a fair and reasonable value and paid for with funds to the credit of the board. In case of disagreement, such value shall be determined in the manner provided in section ten. [39 Stat. L. 731.]

SEC. 12. [Investigations by board as to cost of building vessels, etc.—reports.] That the board shall investigate the relative cost of building merchant vessels in the United States and in foreign maritime countries, and the relative cost, advantages, and disadvantages of operating in the foreign trade vessels under United States registry and under foreign registry. It shall examine the rules under which vessels are constructed abroad and in the United States, and the methods of classifying and rating same, and it shall examine into the subject of marine insurance, the number of companies in the United States, domestic and foreign, engaging in marine insurance, the extent of the insurance on hulls and cargoes placed or written in the United States, and the extent of reinsurance of American maritime risks in foreign companies, and ascertain what steps may be necessary to develop an ample marine insurance system as an aid in the development of an American merchant marine. It shall examine the navigation laws of the United States and the rules and regulations thereunder, and make such recommendations to the Congress as it deems proper for the amendment, improvement, and revision of such laws, and for the development of the American merchant marine. It shall investigate the legal status of mortgage loans on vessel property, with a view to means of improving the security of such loans and of encouraging investment in American shipping.

It shall, on or before the first day of December in each year, make a report to the Congress, which shall include its recommendations and the results of its investigations, a summary of its transactions, and a statement of all expenditures and receipts under this Act, and of the operations of any corporation in which the United States is a stockholder, and the names and compensation of all persons employed by the board. [39 Stat. L. 731.]

SEC. 13. [**Limit on liability incurred — bonds.**] That for the purpose of carrying out the provisions of sections five and eleven no liability shall be incurred exceeding a total of \$50,000,000 and the Secretary of the Treasury, upon the request of the board, approved by the President, shall from time to time issue and sell or use any of the bonds of the United States now available in the Treasury under the Acts of August fifth, nineteen hundred and nine, February fourth, nineteen hundred and ten, and March second, nineteen hundred and eleven, relating to the issue of bonds for the construction of the Panama Canal, to a total amount not to exceed \$50,000,000: *Provided*, That any bonds issued and sold or used under the provisions of this section may be made payable at such time within fifty years after issue as the Secretary of the Treasury may fix, instead of fifty years after the date of issue, as prescribed in the Act of August fifth, nineteen hundred and nine.

The proceeds of such bonds and the net proceeds of all sales, charters, and leases of vessels and of sales of stock made by the board, and all other moneys received by it from any source, shall be covered into the Treasury to the credit of the board, and are hereby permanently appropriated for the purpose of carrying out the provisions of sections five and eleven. [39 Stat. L. 732.]

For the Act of Aug. 5, 1909, ch. 6, § 39, mentioned in the text, see 1909 Supp. Fed. Stat. Ann. 834; 8 Fed. Stat. Ann. (2d ed.) 417.

For the Act of Feb. 4, 1910, ch. 25, mentioned in the text, see 1912 Supp. Fed. Stat. Ann. 309; 8 Fed. Stat. Ann. (2d ed.) 418.

For the Act of March 2, 1911, ch. 195, mentioned in the text, see 1912 Supp. Fed. Stat. Ann. 350; 8 Fed. Stat. Ann. (2d ed.) 418.

SEC. 14. [**Common carriers by water — combinations and discriminations prohibited — penalty.**] That no common carrier by water shall directly or indirectly —

First. Pay, or allow, or enter into any combination, agreement, or understanding, express or implied, to pay or allow, a deferred rebate to any shipper. The term “deferred rebate” in this Act means a return of any portion of the freight money by a carrier to any shipper as a consideration for the giving of all or any portion of his shipments to the same or any other carrier, or for any other purpose, the payment of which is deferred beyond the completion of the service for which it is paid, and is made only if, during both the period for which computed and the period of deferment, the shipper has complied with the terms of the rebate agreement or arrangement.

Second. Use a fighting ship either separately or in conjunction with any other carrier, through agreement or otherwise. The term “fighting ship” in this Act means a vessel used in a particular trade by a carrier or group of carriers for the purpose of excluding, preventing, or reducing competition by driving another carrier out of said trade.

Third. Retaliate against any shipper by refusing, or threatening to refuse, space accommodations when such are available, or resort to other discriminating or unfair methods, because such shipper has patronized any other carrier or has filed a complaint charging unfair treatment, or for any other reason.

Fourth. Make any unfair or unjustly discriminatory contract with any

shipper based on the volume of freight offered, or unfairly treat or unjustly discriminate against any shipper in the matter of (a) cargo space accommodations or other facilities, due regard being had for the proper loading of the vessel and the available tonnage; (b) the loading and landing of freight in proper condition; or (c) the adjustment and settlement of claims.

Any carrier who violates any provision of this section shall be guilty of a misdemeanor punishable by a fine of not more than \$25,000 for each offense. [39 Stat. L. 733.]

SEC. 15. [Agreements between carriers, etc.—approval by board—penalties.] That every common carrier by water, or other person subject to this Act, shall file immediately with the board a true copy, or, if oral, a true and complete memorandum, of every agreement with another such carrier or other person subject to this Act, or modification or cancellation thereof, to which it may be a party or conform in whole or in part, fixing or regulating transportation rates or fares; giving or receiving special rates, accommodations, or other special privileges or advantages; controlling, regulating, preventing, or destroying competition; pooling or apportioning earnings, losses, or traffic; allotting ports or restricting or otherwise regulating the number and character of sailings between ports; limiting or regulating in any way the volume or character of freight or passenger traffic to be carried; or in any manner providing for an exclusive, preferential, or cooperative working arrangement. The term "agreement" in this section includes understandings, conferences, and other arrangements.

The board may by order disapprove, cancel, or modify any agreement, or any modification or cancellation thereof, whether or not previously approved by it, that it finds to be unjustly discriminatory or unfair as between carriers, shippers, exporters, importers, or ports, or between exporters from the United States and their foreign competitors, or to operate to the detriment of the commerce of the United States, or to be in violation of this Act, and shall approve all other agreements, modifications, or cancellations.

Agreements existing at the time of the organization of the board shall be lawful until disapproved by the board. It shall be unlawful to carry out any agreement or any portion thereof disapproved by the board.

All agreements, modifications, or cancellations made after the organization of the board shall be lawful only when and as long as approved by the board, and before approval or after disapproval it shall be unlawful to carry out in whole or in part, directly or indirectly, any such agreement, modification, or cancellation.

Every agreement, modification, or cancellation lawful under this section shall be excepted from the provisions of the Act approved July second, eighteen hundred and ninety, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," and amendments and Acts supplementary thereto, and the provisions of sections seventy-three to seventy-seven, both inclusive, of the Act approved August twenty-seventh, eighteen hundred and ninety-four, entitled "An Act to reduce taxation, to provide revenue for the Government, and for other purposes," and amendments and Acts supplementary thereto.

Whoever violates any provision of this section shall be liable to a penalty of \$1,000 for each day such violation continues, to be recovered by the United States in a civil action. [39 Stat. L. 733.]

For the Act of July 2, 1890, ch. 647, mentioned in the text, see 7 Fed. Stat. Ann. 336, and for said Acts and amendments and Acts supplementary thereto see 9 Fed. Stat. Ann. (2d ed.) 644.

For the Act of July 27, 1894, ch. 349, §§ 73-77, mentioned in the text, see 7 Fed. Stat. Ann. 346, and for said Act and amendments and Acts supplementary thereto see 9 Fed. Stat. Ann. (2d ed.) 642.

SEC. 16. [Preference or advantages by common carriers, etc., prohibited — insurance.] That it shall be unlawful for any common carrier by water, or other person subject to this Act, either alone or in conjunction with any other person, directly or indirectly —

First. To make or give any undue or unreasonable preference or advantage to any particular person, locality, or description of traffic in any respect whatsoever, or to subject any particular person, locality, or description of traffic to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

Second. To allow any person to obtain transportation for property at less than the regular rates then established and enforced on the line of such carrier, by means of false billing, false classification, false weighing, false report of weight, or by any other unjust or unfair device or means.

Third. To induce, persuade, or otherwise influence any marine insurance company or underwriter, or agent thereof, not to give a competing carrier by water as favorable a rate of insurance on vessel or cargo, having due regard to the class of vessel or cargo, as is granted to such carrier or other person subject to this Act. [39 Stat. L. 734.]

SEC. 17. [Discriminatory rates, etc.—receiving, etc., property — reasonable regulations.] That no common carrier by water in foreign commerce shall demand, charge, or collect any rate, fare, or charge which is unjustly discriminatory between shippers or ports, or unjustly prejudicial to exporters of the United States as compared with their foreign competitors. Whenever the board finds that any such rate, fare, or charge is demanded, charged, or collected it may alter the same to the extent necessary to correct such unjust discrimination or prejudice and make an order that the carrier shall discontinue demanding, charging, or collecting any such unjustly discriminatory or prejudicial rate, fare, or charge.

Every such carrier and every other person subject to this Act shall establish, observe, and enforce just and reasonable regulations and practices relating to or connected with the receiving, handling, storing, or delivering of property. Whenever the board finds that any such regulation or practice is unjust or unreasonable it may determine, prescribe, and order enforced a just and reasonable regulation or practice. [39 Stat. L. 734.]

SEC. 18. [Reasonable rates, etc.—tariffs.] That every common carrier by water in interstate commerce shall establish, observe, and enforce just and reasonable rates, fares, charges, classifications, and tariffs, and just and reasonable regulations and practices relating thereto and to the issuance.

form, and substance of tickets, receipts, and bills of lading, the manner and method of presenting, marking, packing, and delivering property for transportation, the carrying of personal, sample, and excess baggage, the facilities for transportation, and all other matters relating to or connected with the receiving, handling, transporting, storing, or delivering of property.

Every such carrier shall file with the board and keep open to public inspection, in the form and manner and within the time prescribed by the board, the maximum rates, fares, and charges for or in connection with transportation between points on its own route; and if a through route has been established, the maximum rates, fares, and charges for or in connection with transportation between points on its own route and points on the route of any other carrier by water.

No such carrier shall demand, charge, or collect a greater compensation for such transportation than the rates, fares, and charges filed in compliance with this section, except with the approval of the board and after ten days' public notice in the form and manner prescribed by the board, stating the increase proposed to be made; but the board for good cause shown may waive such notice.

Whenever the board finds that any rate, fare, charge, classification, tariff, regulation, or practice, demanded, charged, collected, or observed by such carrier is unjust or unreasonable, it may determine, prescribe, and order enforced a just and reasonable maximum rate, fare, or charge, or a just and reasonable classification, tariff, regulation, or practice. [39 Stat. L. 735.]

SEC. 19. [Reduction of rates to injure competitor — subsequent increase regulated.] That whenever a common carrier by water in interstate commerce reduces its rates on the carriage of any species of freight to or from competitive points below a fair and remunerative basis with the intent of driving out or otherwise injuring a competitive carrier by water, it shall not increase such rates unless after hearing the board finds that such proposed increase rests upon changed conditions other than the elimination of said competition. [39 Stat. L. 735.] .

SEC. 20. [Disclosure of information — prohibition.] That it shall be unlawful for any common carrier by water or other person subject to this Act, or any officer, receiver, trustee, lessee, agent, or employee of such carrier or person, or for any other person authorized by such carrier or person to receive information, knowingly to disclose to or permit to be acquired by any person other than the shipper or consignee, without the consent of such shipper or consignee, any information concerning the nature, kind, quantity, destination, consignee, or routing of any property tendered or delivered to such common carrier or other person subject to this Act for transportation in interstate or foreign commerce, which information may be used to the detriment or prejudice of such shipper or consignee, or which may improperly disclose his business transactions to a competitor, or which may be used to the detriment or prejudice of any carrier; and it shall also be unlawful for any person to solicit or knowingly receive any such information which may be so used.

Nothing in this Act shall be construed to prevent the giving of such information in response to any legal process issued under the authority of any court, or to any officer or agent of the Government of the United States, or of any State, Territory, District, or possession thereof, in the exercise of his powers, or to any officer or other duly authorized person seeking such information for the prosecution of persons charged with or suspected of crime, or to another carrier, or its duly authorized agent, for the purpose of adjusting mutual traffic accounts in the ordinary course of business of such carriers. [39 Stat. L. 735.]

SEC. 21. [Reports, etc., filed by carrier with board — failure to file — falsification, destruction, etc. — penalty.] That the board may require any common carrier by water, or other person subject to this Act, or any officer, receiver, trustee, lessee, agent, or employee thereof, to file with it any periodical or special report, or any account, record, rate, or charge, or any memorandum of any facts and transactions appertaining to the business of such carrier or other person subject to this Act. Such report, account, record, rate, charge, or memorandum shall be under oath whenever the board so requires, and shall be furnished in the form and within the time prescribed by the board. Whoever fails to file any report, account, record, rate, charge, or memorandum as required by this section shall forfeit to the United States the sum of \$100 for each day of such default.

Whoever willfully falsifies, destroys, mutilates, or alters any such report, account, record, rate, charge, or memorandum, or willfully files a false report, account, record, rate, charge, or memorandum shall be guilty of a misdemeanor, and subject upon conviction to a fine of not more than \$1,000, or imprisonment for not more than one year, or to both such fine and imprisonment. [39 Stat. L. 736.]

SEC. 22. [Violations of Act — complaints — investigations by board.] That any person may file with the board a sworn complaint setting forth any violation of this Act by a common carrier by water, or other person subject to this Act, and asking reparation for the injury, if any, caused thereby. The board shall furnish a copy of the complaint to such carrier or other person, who shall, within a reasonable time specified by the board, satisfy the complaint or answer it in writing. If the complaint is not satisfied the board shall, except as otherwise provided in this Act, investigate it in such manner and by such means, and make such order as it deems proper. The board, if the complaint is filed within two years after the cause of action accrued, may direct the payment, on or before a day named, of full reparation to the complainant for the injury caused by such violation.

The board, upon its own motion, may in like manner and, except as to orders for the payment of money, with the same powers, investigate any violation of this Act. [39 Stat. L. 736.]

SEC. 23. [Orders of board.] Orders of the board relating to any violation of this Act shall be made only after full hearing, and upon a sworn complaint or in proceedings instituted of its own motion.

All orders of the board other than for the payment of money made under this Act shall continue in force for such time, not exceeding two years, as shall be prescribed therein by the board, unless suspended, modified, or set aside by the board or any court of competent jurisdiction. [39 Stat. L. 736.]

SEC. 24. [Reports of board as to investigations resulting in a hearing — use as evidence.] That the board shall enter of record a written report of every investigation made under this Act in which a hearing has been held, stating its conclusions, decisions, and order, and, if reparation is awarded, the findings of fact on which the award is made, and shall furnish a copy of such report to all parties to the investigation.

The board may publish such reports in the form best adapted for public information and use, and such authorized publications shall, without further proof or authentication, be competent evidence of such reports in all courts of the United States and of the States, Territories, Districts, and possessions thereof. [39 Stat. L. 736.]

SEC. 25. [Authority of board to reverse, etc., orders.] That the board may reverse, suspend, or modify, upon such notice and in such manner as it deems proper, any order made by it. Upon application of any party to a decision or order it may grant a rehearing of the same or any matter determined therein, but no such application for or allowance of a rehearing shall, except by special order of the board, operate as a stay of such order. [39 Stat. L. 736.]

SEC. 26. [Investigations of action of foreign government affecting United States shipping.] The board shall have power, and it shall be its duty whenever complaint shall be made to it, to investigate the action of any foreign Government with respect to the privileges afforded and burdens imposed upon vessels of the United States engaged in foreign trade whenever it shall appear that the laws, regulations, or practices of any foreign Government operate in such a manner that vessels of the United States are not accorded equal privileges in foreign trade with vessels of such foreign countries or vessels of other foreign countries, either in trade to or from the ports of such foreign country or in respect of the passage or transportation through such foreign country of passengers or goods intended for shipment or transportation in such vessels of the United States, either to or from ports of such foreign country or to or from ports of other foreign countries. It shall be the duty of the board to report the results of its investigation to the President with its recommendations and the President is hereby authorized and empowered to secure by diplomatic action equal privileges for vessels of the United States engaged in such foreign trade. And if by such diplomatic action the President shall be unable to secure such equal privileges then the President shall advise Congress as to the facts and his conclusions by special message, if deemed important in the public interest, in order that proper action may be taken thereon. [39 Stat. L. 737.]

SEC. 27. [Subpoenas — fees and mileage.] That for the purpose of investigating alleged violations of this Act, the board may by subpoena

compel the attendance of witnesses and the production of books, papers, documents, and other evidence from any place in the United States at any designated place of hearing. Subpœnas may be signed by any commissioner, and oaths or affirmations may be administered, witnesses examined, and evidence received by any commissioner or examiner, or, under the direction of the board, by any person authorized under the laws of the United States or of any State, Territory, District, or possession thereof to administer oaths. Persons so acting under the direction of the board and witnesses shall, unless employees of the board, be entitled to the same fees and mileage as in the courts of the United States. Obedience to any such subpœna shall, on application by the board, be enforced as are orders of the board other than for the payment of money. [39 Stat. L. 737.]

SEC. 28. [Witnesses.] That no person shall be excused on the ground that it may tend to incriminate him or subject him to a penalty or forfeiture, from attending and testifying, or producing books, papers, documents, and other evidence, in obedience to the subpœna of the board or of any court in any proceeding based upon or growing out of any alleged violation of this Act; but no natural person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing as to which, in obedience to a subpœna and under oath, he may so testify or produce evidence, except that no person shall be exempt from prosecution and punishment for perjury committed in so testifying. [39 Stat. L. 737.]

SEC. 29. [Orders not for payment of money — enforcement — injunction.] That in case of violation of any order of the board, other than an order for the payment of money, the board, or any party injured by such violation, or the Attorney General, may apply to a district court having jurisdiction of the parties; and if, after hearing, the court determines that the order was regularly made and duly issued, it shall enforce obedience thereto by a writ of injunction or other proper process, mandatory or otherwise. [39 Stat. L. 737.]

SEC. 30. [Orders for payment of money — enforcement.] That in case of violation of any order of the board for the payment of money the person to whom such award was made may file in the district court for the district in which such person resides, or in which is located any office of the carrier or other person to whom the order was directed, or in which is located any point of call on a regular route operated by the carrier, or in any court of general jurisdiction of a State, Territory, District, or possession of the United States having jurisdiction of the parties, a petition or suit setting forth briefly the causes for which he claims damages and the order of the board in the premises.

In the district court the findings and order of the board shall be prima facie evidence of the facts therein stated, and the petitioner shall not be liable for costs, nor shall he be liable for costs at any subsequent stage of the proceedings unless they accrue upon his appeal. If a petitioner in a district court finally prevails, he shall be allowed a reasonable attorney's fee, to be taxed and collected as part of the costs of the suit.

All parties in whose favor the board has made an award of reparation by a single order may be joined as plaintiffs, and all other parties to such order may be joined as defendants, in a single suit in any district in which any one such plaintiff could maintain a suit against any one such defendant. Service of process against any such defendant not found in that district may be made in any district in which is located any office of, or point of call on a regular route operated by, such defendant. Judgment may be entered in favor of any plaintiff against the defendant liable to that plaintiff.

No petition or suit for the enforcement of an order for the payment of money shall be maintained unless filed within one year from the date of the order. [39 Stat. L. 737.]

SEC. 31. [Suits in United States courts to enforce, etc., orders of board — venue and procedure.] That the venue and procedure in the courts of the United States in suits brought to enforce, suspend, or set aside, in whole or in part, any order of the board shall, except as herein otherwise provided, be the same as in similar suits in regard to orders of the Interstate Commerce Commission, but such suits may also be maintained in any district court having jurisdiction of the parties. [39 Stat. L. 738.]

SEC. 32. [Violation of provisions of Act — punishment.] That whoever violates any provision of this Act, except where a different penalty is provided, shall be guilty of a misdemeanor, punishable by fine of not to exceed \$5,000. [39 Stat. L. 738.]

SEC. 33. [Construction of Act — Interstate Commerce Commission.] That this Act shall not be construed to affect the power or jurisdiction of the Interstate Commerce Commission, nor to confer upon the board concurrent power or jurisdiction over any matter within the power or jurisdiction of such commission; nor shall this Act be construed to apply to intrastate commerce. [39 Stat. L. 738.]

SEC. 34. Invalidity of part of Act — effect as to remainder.] That if any provision of this Act, or the application of such provision to certain circumstances, is held unconstitutional, the remainder of the Act, and the application of such provision to circumstances other than those as to which it is held unconstitutional, shall not be affected thereby. [39 Stat. L. 738.]

SEC. 35. [Appropriation for defraying expenses incurred.] That for the fiscal year ending June thirtieth, nineteen hundred and seventeen, the sum of \$100,000 is hereby appropriated, out of any moneys in the Treasury of the United States not otherwise appropriated, for the purpose of defraying the expenses of the establishment and maintenance of the board, including the payment of salaries herein authorized. [39 Stat. L. 738.]

SEC. 36. [Refusal of clearance by Secretary of Treasury — grounds.] The Secretary of the Treasury is authorized to refuse a clearance to any vessel or other vehicle laden with merchandise destined for a foreign or

domestic port whenever he shall have satisfactory reason to believe that the master, owner, or other officer of such vessel or other vehicle refuses or declines to accept or receive freight or cargo in good condition tendered for such port of destination or for some intermediate port of call, together with the proper freight or transportation charges therefor, by any citizen of the United States, unless the same is fully laden and has no space accommodations for the freight or cargo so tendered, due regard being had for the proper loading of such vessel or vehicle, or unless such freight or cargo consists of merchandise for which such vessel or vehicle is not adaptable. [39 Stat. L. 738.]

See the following section of this Act and the note thereto.

SEC. 37. [War or national emergency — condition precedent to foreign registry or ownership — violation of provisions — forfeiture — other penalties.] That when the United States is at war or during any national emergency, the existence of which is declared by proclamation of the President, it shall be unlawful, without first obtaining the approval of the board:

(a) To transfer to or place under any foreign registry or flag any vessel owned in whole or in part by any person a citizen of the United States or by a corporation organized under the laws of the United States, or of any State, Territory, District, or possession thereof; or

(b) To sell, mortgage, lease, charter, deliver, or in any manner transfer, or agree to sell, mortgage, lease, charter, deliver or in any manner transfer to any person not a citizen of the United States, (1) any such vessel or any interest therein, or (2) any vessel documented under the laws of the United States, or any interest therein, or (3) any shipyard, dry dock, ship-building or ship-repairing plant or facilities, or any interest therein; or

(c) To enter into any contract, agreement, or understanding to construct a vessel within the United States for or to be delivered to any person not a citizen of the United States, without expressly stipulating that such construction shall not begin until after the war or emergency proclaimed by the President has ended; or

(d) To make any agreement or effect any understanding whereby there is vested in or for the benefit of any person not a citizen of the United States, the controlling interest or a majority of the voting power in a corporation which is organized under the laws of the United States, or of any State, Territory, District, or possession thereof, and which owns any vessel, shipyard, dry dock, or ship-building or ship-repairing plant or facilities; or

(e) To cause or procure any vessel constructed in whole or in part within the United States, which has never cleared for any foreign port, to depart from a port of the United States before it has been documented under the laws of the United States.

Whoever violates, or attempts or conspires to violate, any of the provisions of this section shall be guilty of a misdemeanor, punishable by a fine of not more than \$5,000 or by imprisonment for not more than five years, or both.

Any vessel, shipyard, dry dock, ship-building or ship-repairing plant or facilities, or interest therein, sold, mortgaged, leased, chartered, delivered, transferred, or documented, or agreed to be sold, mortgaged, leased,

chartered, delivered, transferred, or documented, in violation of any of the provisions of this section, and any stocks, bonds, or other securities sold or transferred, or agreed to be sold or transferred, in violation of any of such provisions, or any vessel departing in violation of the provisions of subdivision (e), shall be forfeited to the United States.

Any such sale, mortgage, lease, charter, delivery, transfer, documentation, or agreement therefor shall be void, whether made within or without the United States, and any consideration paid therefor or deposited in connection therewith shall be recoverable at the suit of the person who has paid or deposited the same, or of his successor or assigns, after the tender of such vessel, shipyard, dry dock, ship building or ship repairing plant or facilities, or interest therein, or of such stocks, bonds or other securities, to the person entitled thereto, or after forfeiture thereof to the United States, unless the person to whom the consideration was paid, or in whose interest it was deposited, entered into the transaction in the honest belief that the person who paid or deposited such consideration was a citizen of the United States. [— *Stat. L.* —.]

The foregoing section 37 and the following sections 38-40 were added to this Act by the Act of July 15, 1918, ch. —, entitled "An Act To amend the Act approved September seventh, nineteen hundred and sixteen, entitled 'An Act to establish a United States Shipping Board for the purpose of encouraging, developing, and creating a naval auxiliary and naval reserve and a merchant marine to meet the requirements of the commerce of the United States with its Territories and possessions and with foreign countries; to regulate carriers by water in the foreign and interstate commerce of the United States; and for other purposes,'" which provided in section 4 thereof "That said Act is hereby amended by adding at the end thereof eight sections, as follows," etc.

Sections 1, 2 and 3 of said amendatory Act amended sections 1, 2 and 9, respectively, of this Act.

SEC. 38. [Prosecution of forfeitures.] That all forfeitures incurred under the provisions of this Act may be prosecuted in the same court, and may be disposed of in the same manner, as forfeitures incurred for offenses against the law relating to the collection of duties. [— *Stat. L.* —.]

See the note to the preceding section 37 of this Act.

SEC. 39. [Evidence in forfeiture proceedings.] That in any action or proceeding under the provisions of this Act to enforce a forfeiture the conviction in a court of criminal jurisdiction of any person for a violation thereof with respect to the subject of the forfeiture shall constitute prima facie evidence of such violation against the person so convicted. [— *Stat. L.* —.]

See the note to section 37 of this Act, *supra*, this page.

SEC. 40. [Transfer of interests in vessels — formalities — violations.] That whenever any bill of sale, mortgage, hypothecation, or conveyance of any vessel, or part thereof, or interest therein, is presented to any collector of the customs to be recorded, the vendee, mortgagee, or transferee, shall file therewith a written declaration in such form as the board may by regulation prescribe, setting forth the facts relating to his citizenship, and such other facts as the board requires, showing that the transaction does not involve a violation of any of the provisions of section nine

or thirty-seven. Unless the board, before such presentation, has failed to prescribe such form, no such bill of sale, mortgage, hypothecation, or conveyance shall be valid against any person whatsoever until such declaration has been filed. Any declaration filed by or in behalf of a corporation shall be signed by the president, secretary, or treasurer thereof.

Whoever knowingly makes any false statement of a material fact in any such declaration shall be guilty of a misdemeanor and subject to a fine of not more than \$5,000, or to imprisonment for not more than five years, or both. [— *Stat. L.* —.]

See the note to section 37 of this Act, *supra*, 800.

SEC. 41. [Approval of shipping board — how accorded — conditions — false statements.] That whenever by said section nine or thirty-seven the approval of the board is required to render any act or transaction lawful, such approval may be accorded either absolutely or upon such conditions as the board prescribes. Whenever the approval of the board is accorded upon any condition a statement of such condition shall be entered upon its records and incorporated in the same document or paper which notifies the applicant of such approval. A violation of such condition so incorporated shall constitute a misdemeanor and shall be punishable by fine and imprisonment in the same manner, and shall subject the vessel, stocks, bonds, or other subject matter of the application conditionally approved to forfeiture in the same manner, as though the act conditionally approved had been done without the approval of the board, but the offense shall be deemed to have been committed at the time of the violation of the condition.

Whenever by this Act the approval of the board is required to render any act or transaction lawful, whoever knowingly makes any false statement of a material fact to the board, or to any member thereof, or to any officer, attorney, or agent thereof, for the purpose of securing such approval, shall be guilty of a misdemeanor and subject to a fine of not more than \$5,000 or to imprisonment for not more than five years, or both. [— *Stat. L.* —.]

See the note to section 37 of this Act, *supra*, 800.

SEC. 42. [Character of vessel as documented — period of continuance.] That any vessel registered, enrolled, or licensed under the laws of the United States shall be deemed to continue to be documented under the laws of the United States within the meaning of subdivision (b) of section thirty-seven, until such registry, enrollment, or license is surrendered with the approval of the board, the provisions of any other Act of Congress to the contrary notwithstanding. [— *Stat. L.* —.]

See the note to section 37 of this Act, *supra*, 800.

SEC. 43. [Ending of war or national emergency — how evidenced.] That the fact that a war or emergency has ended shall, for the purposes of this Act, be evidenced by a proclamation of the President. [— *Stat. L.* —.]

See the note to section 37 of this Act, *supra*, 800.

Sec. 44. [Short title of Act.] That this Act may be cited as Shipping Act, 1916. [*— Stat. L. —.*]

See the note to section 37 of this Act, *supra*, p. 800.

Joint Resolution Authorizing the President to take over for the United States the possession and title of any vessel within its jurisdiction, which at the time of coming therein was owned in whole or in part by any corporation, citizen, or subject of any nation with which the United States may be at war, or was under register of any such nation, and for other purposes.

[*Joint Res. of May 12, 1917, No. —, — Stat. L. —.*]

[SEC. 1.] [Foreign vessels in American waters owned in enemy country — seizure by President.] That the President be, and he is hereby, authorized to take over to the United States the immediate possession and title of any vessel within the jurisdiction thereof, including the Canal Zone and all territories and insular possessions of the United States except the American Virgin Islands, which at the time of coming into such jurisdiction was owned in whole or in part by any corporation, citizen, or subject of any nation with which the United States may be at war when such vessel shall be taken, or was flying the flag of or was under register of any such nation or any political subdivision or municipality thereof; and, through the United States Shipping Board, or any department or agency of the Government, to operate, lease, charter, and equip such vessel in any service of the United States, or in any commerce, foreign or coastwise. [*— Stat. L. —.*]

SEC. 2. [Board of survey — appointment — duties.] That the Secretary of the Navy be, and he is hereby, authorized and directed to appoint, subject to the approval of the President, a board of survey, whose duty it shall be to ascertain the actual value of the vessel, its equipment, appurtenances, and all property contained therein, at the time of its taking, and to make a written report of their findings to the Secretary of the Navy, who shall preserve such report with the records of his department. These findings shall be considered as competent evidence in all proceedings on any claim for compensation. [*— Stat. L. —.*]

[SEC. 1.] [Emergency shipping fund — acquisition of ships or material or plants for production thereof — acquisition of transportation facilities — transportation of shipyard employees — compliance with orders — compensation — definitions — authority of President, expiration — expenditure — limit.] * * * The President is hereby authorized and empowered, within the limits of the amounts herein authorized —

(a) To place an order with any person for such ships or material as the necessities of the Government, to be determined by the President, may require during the period of the war and which are of the nature, kind and quantity usually produced or capable of being produced by such person.

(b) To modify, suspend, cancel, or requisition any existing or future contract for the building, production, or purchase of ships or material, or take possession, lease or assume control of, any street railroad, interurban railroad, or part thereof, cars and other equipment necessary to operation.

(c) To require the owner or occupier of any plant in which ships or materials are built or produced to place at the disposal of the United States the whole or any part of the output of such plant, to deliver such output or part thereof in such quantities and at such times as may be specified in the order.

(d) To requisition and take over for use or occupation by the United States any plant, or any part thereof without taking possession of the entire plant, whether the United States has or has not any contract or agreement with the owner or occupier of such plant.

(e) To purchase, requisition, or take over the title to, or the possession of, for use or operation by the United States any ship now constructed or in the process of construction or hereafter constructed, or any part thereof, or charter of such ship.

(f) To take possession of, lease or assume control of, any street railroad, interurban railroad, or part thereof wherever operated, and all cars, appurtenances, and franchises or parts thereof commonly used in connection with the operation thereof necessary for the transfer and transportation of employees of shipyards or plants engaged or that may hereafter be engaged in the construction of ships or equipment therefor for the United States.

Compliance with all orders issued hereunder shall be obligatory on any person to whom such order is given, and such order shall take precedence over all other orders and contracts placed with such person. If any person owning any ship, charter, or material, or owning, leasing, or operating any plant equipped for the building or production of ships or material shall refuse or fail to comply therewith or to give to the United States such preference in the execution of such order, or shall refuse to build, supply, furnish, or manufacture the kind, quantities or qualities of the ships or material so ordered, at such reasonable price as shall be determined by the President, the President may take immediate possession of any ship, charter, material or plant of such person, or any part thereof without taking possession of the entire plant, and may use the same at such times and in such manner as he may consider necessary or expedient.

Whenever the United States shall cancel, modify, suspend or requisition any contract, make use of, assume, occupy, requisition, acquire or take over any plant or part thereof, or any ship, charter, or material in accordance with the provisions hereof, it shall make just compensation therefor, to be determined by the President; and if the amount thereof, so determined by the President, is unsatisfactory to the person entitled to receive the same, such person shall be paid seventy-five per centum of the amount so determined by the President and shall be entitled to sue the United States to recover such further sum as, added to said seventy-five per centum, will make up such amount as will be just compensation therefor, in the manner

provided for by section twenty-four, paragraph twenty, and section one hundred and forty-five of the Judicial Code.

The President may exercise the power and authority hereby vested in him, and expend the money herein and hereafter appropriated through such agency or agencies as he shall determine from time to time: *Provided*, That all money turned over to the United States Shipping Board Emergency Fleet Corporation may be expended as other moneys of said corporation are now expended. All ships constructed, purchased, or requisitioned under authority herein, or heretofore or hereafter acquired by the United States, shall be managed, operated, and disposed of as the President may direct.

The word "person" as used herein, shall include any individual, trustee, firm, association, company, corporation, or contractor.

The word "ship" shall include any boat, vessel, or submarine and the parts thereof.

The word "material" shall include stores, supplies, and equipment for ships, and everything required for or in connection with the production thereof.

The word "plant" shall include any factory, workshop, warehouse, engine works; buildings used for manufacture, assembling, construction, or any process; any shipyard or dockyard and discharging terminal or other facilities connected therewith.

The words "United States" shall include all lands and waters subject to the jurisdiction of the United States of America.

All authority granted to the President herein, or by him delegated, shall cease six months after a final treaty of peace is proclaimed between this Government and the German Empire.

The cost of purchasing, requisitioning, or otherwise acquiring plants, material, charters, or ships now constructed or in the course of construction and the expediting of construction of ships thus under construction shall not exceed the sum of \$250,000,000, exclusive of the cost of ships turned over to the Army and Navy, the expenditure of which is hereby authorized, and in executing the authority granted by this Act for such purpose the President shall not expend or obligate the United States to expend more than the said sum; and there is hereby appropriated for said purpose, \$150,000,000: *Provided*, That this appropriation shall be reimbursed from available funds under the War and Navy Departments for vessels turned over for the exclusive use of those departments or either of them.

The cost of construction of ships authorized herein shall not exceed the sum of \$500,000,000, the expenditure of which is hereby authorized, and in executing the authority granted herein for such purpose the President shall not expend or obligate the United States to expend more than said sum; and there is hereby appropriated for said purpose, \$250,000,000.

For the operation of the ships herein authorized or in any way acquired by the United States, except those acquired for the Army or Navy, and for every expenditure incident thereto, \$5,000,000. [*— Stat. L. — as amended by — Stat. L. —.*]

The foregoing paragraph and that following are from the Deficiencies Appropriation Act of June 15, 1917, ch. —.

For Judicial Code, § 24, mentioned in the text, see 1912 Supp. Fed. Stat. Ann. 139; 4 Fed. Stat. Ann. (2d ed.) 338.

For Judicial Code, § 145, mentioned in the text, see 1912 Supp. Fed. Stat. Ann. 200; 5 Fed. Stat. Ann. (2d ed.) 649.

Subdivision "(b)" of this section was amended to read as given in the text by an Act of April 22, 1918, ch. —, § 2, the amendment consisting of the addition after the word "materials" of the provisions relating to street railroads, etc.

Subdivision "(f)" was added to this section by the Act of April 22, 1918, ch. —, § 1. See section 3 of said Act, *infra*, p. 809.

[Vessels transporting fuel — purchase by president.] * * * That when, in the opinion of the President, the prices asked for the charter of vessels for the transportation of fuel are excessive, he is authorized to purchase vessels suitable for the purpose and, if money is not otherwise available, to pay for them from the appropriation "Fuel and transportation." [— *Stat. L.* —.]

See the note to the preceding paragraph of the text.

TITLE II

VESSELS IN PORTS OF THE UNITED STATES

SECTION 1. [National emergency — seizure of vessels by government.] Whenever the President by proclamation or Executive order declares a national emergency to exist by reason of actual or threatened war, insurrection, or invasion, or disturbance or threatened disturbance of the international relations of the United States, the Secretary of the Treasury may make, subject to the approval of the President, rules and regulations governing the anchorage and movement of any vessel, foreign or domestic, in the territorial waters of the United States, may inspect such vessel at any time, place guards thereon, and, if necessary in his opinion in order to secure such vessels from damage or injury, or to prevent damage or injury to any harbor or waters of the United States, or to secure the observance of the rights and obligations of the United States, may take, by and with the consent of the President, for such purposes, full possession and control of such vessel and remove therefrom the officers and crew thereof and all other persons not specially authorized by him to go or remain on board thereof.

Within the territory and waters of the Canal Zone the Governor of the Panama Canal, with the approval of the President, shall exercise all the powers conferred by this section on the Secretary of the Treasury. [— *Stat. L.* —.]

This Title II, consisting of the foregoing section 1 and the following sections 2-4, and the following Title III are from the Act of June 15, 1917, ch. —, entitled "An Act To punish acts of interference with the foreign relations, the neutrality, and the foreign commerce of the United States, to punish espionage, and better to enforce the criminal laws of the United States, and for other purposes." Title XIII of this Act, given in *CRIMINAL LAW*, *ante*, p. 133, contains provisions applicable alike to both Title II and Title III, and should be read in connection therewith.

SEC. 2. [Interference with seizure — punishment.] If any owner, agent, master, officer, or person in charge, or any member of the crew of any such vessel fails to comply with any regulation or rule issued or order given by the Secretary of the Treasury or the Governor of the Panama Canal under

the provisions of this title, or obstructs or interferes with the exercise of any power conferred by this title, the vessel, together with her tackle, apparel, furniture, and equipment, shall be subject to seizure and forfeiture, to the United States in the same manner as merchandise is forfeited for violation of the customs revenue laws; and the person guilty of such failure, obstruction, or interference shall be fined not more than \$10,000, or imprisoned not more than two years, or both. [— *Stat. L.* —.]

See the note to the preceding section 1 of this Act.

SEC. 3. [Destruction or injury of vessel by owner, etc.—making improper use of vessels — forfeiture.] It shall be unlawful for the owner or master or any other person in charge or command of any private vessel, foreign or domestic, or for any member of the crew or other person, within the territorial waters of the United States, willfully to cause or permit the destruction or injury of such vessel or knowingly to permit said vessel to be used as a place of resort for any person conspiring with another or preparing to commit any offense against the United States, or in violation of the treaties of the United States or of the obligations of the United States under the law of nations, or to defraud the United States, or knowingly to permit such vessels to be used in violation of the rights and obligations of the United States under the law of nations; and in case such vessel shall be so used, with the knowledge of the owner or master or other person in charge or command thereof, the vessel together with her tackle, apparel, furniture, and equipment, shall be subject to seizure and forfeiture to the United States in the same manner as merchandise is forfeited for violation of the customs revenue laws; and whoever violates this section shall be fined not more than \$10,000 or imprisoned not more than two years, or both. [— *Stat. L.* —.]

See the notes to section 1 of this Act, *supra*, p. 806.

SEC. 4. [Enforcement of purpose of title.] The President may employ such part of the land or naval forces of the United States as he may deem necessary to carry out the purpose of this title. [— *Stat. L.* —.]

See the notes to section 1 of this Act, *supra*, p. 806.

TITLE III

INJURING VESSELS ENGAGED IN FOREIGN COMMERCE

SECTION 1. [Nature of injury — punishment of persons committing.] Whoever shall set fire to any vessel of foreign registry, or any vessel of American registry entitled to engage in commerce with foreign nations, or to any vessel of the United States as defined in section three hundred and ten of the Act of March fourth, nineteen hundred and nine, entitled "An Act to codify, revise, and amend the penal laws of the United States," or to the cargo of the same, or shall tamper with the motive power or instrumentalities of navigation of such vessel, or shall place bombs or explosives in or upon such vessel, or shall do any other act to or upon such vessel while within the jurisdiction of the United States, or, if such vessel is of American

registry, while she is on the high sea, with intent to injure or endanger the safety of the vessel or of her cargo, or of persons on board, whether the injury or danger is so intended to take place within the jurisdiction of the United States, or after the vessel shall have departed therefrom; or whoever shall attempt or conspire to do any such acts with such intent, shall be fined not more than \$10,000 or imprisoned not more than twenty years, or both. [— *Stat. L.* —.]

See the notes to section 1, Title II, *supra*, p. 806.

For Penal Laws, § 310, mentioned in the text, see 1909 Supp. Fed. Stat. Ann. 490; 7 Fed. Stat. Ann. (2d ed.) 964.

An Act Giving the United States Shipping Board power to suspend present provisions of law and permit vessels of foreign registry and foreign-built vessels admitted to American registry under the Act of August eighteenth, nineteen hundred and fourteen, to engage in the coastwise trade during the present war and for a period of one hundred and twenty days thereafter, except the coastwise trade with Alaska.

[*Act of Oct. 6, 1917, ch. —, — Stat. L. —.*]

[**American registry of foreign built ships.**] That during the present war with Germany and for a period of one hundred and twenty days thereafter the United States Shipping Board may, if in its judgment the interests of the United States require, suspend the present provisions of law and permit vessels of foreign registry, and foreign-built vessels admitted to American registry under the Act of August eighteenth, nineteen hundred and fourteen, to engage in the coastwise trade of the United States: *Provided*, That no such vessel shall engage in the coastwise trade except upon a permit issued by the United States Shipping Board, which permit shall limit or define the scope of the trade and the time of such employment: *Provided further*, That in issuing permits the board shall give preference to vessels of foreign registry owned, leased, or chartered by citizens of the United States or corporations thereof: *And provided further*, That the provisions of this Act shall not apply to the coastwise trade with Alaska or between Alaskan ports. [— *Stat. L.* —.]

For the Act of Aug. 18, 1914, ch. 256, mentioned in the title of this Act, see 1916 Supp. Fed. Stat. Ann. 252; 9 Fed. Stat. Ann. (2d ed.) 295.

SEC. 3. [Compensation for property acquired through emergency shipping fund.] That upon taking possession of such property, or leasing or assuming control thereof, just compensation shall be made therefor, to be determined by the President, and if the amount thereof so determined by the President is unsatisfactory to the person entitled to receive the same, such person shall be paid seventy-five per centum of the amount so determined by the President and shall be entitled to sue the United States of America to recover such further sums as added to seventy-five per centum will make up such amount as will be just compensation therefor, in the

manner provided for by section twenty-four, paragraph twenty, and section one hundred and forty-five of the Judicial Code.

The President may exercise the power and authority hereby vested in him through the several departments of the Government, and through such agency or agencies as he shall determine from time to time. [— *Stat. L.* —.]

This is the last section of the Act of April 22, 1918, ch. —, entitled "An Act To amend the emergency shipping fund provisions of the urgent deficiency appropriation Act approved June fifteenth, nineteen hundred and seventeen, so as to empower the President and his designated agents to take over certain transportation systems for the transportation of shipyard and plant employees, and for other purposes."

Sections 1 and 2 of this Act amended the Act of June 15, 1917, ch. —, § 1, and are incorporated therein, *supra*, p. 803.

For Judicial Code, § 24, see 1912 Supp. Fed. Stat. Ann. p. 138; 4 Fed. Stat. Ann. (2d ed.) 838.

For Judicial Code, § 145, see 1912 Supp. Fed. Stat. Ann. p. 200; 5 Fed. Stat. Ann. (2d ed.) 649.

An Act To require numbering and recording of undocumented vessels.

[*Act of June 7, 1918, ch. —, — Stat. L. —.*]

[SEC. 1.] [**Undocumented vessels — numbering.**] That every undocumented vessel, operated in whole or in part by machinery, owned in the United States and found on the navigable waters thereof, except public vessels, and vessels not exceeding sixteen feet in length measured from end to end over the deck excluding sheer, temporarily equipped with detachable motors, shall be numbered. Such numbers shall be not less in size than three inches and painted or attached to each bow of the vessel in such manner and color as to be distinctly visible and legible. [— *Stat. L.* —.]

SEC. 2. [**Numbers by whom awarded — recording numbers.**] That the said numbers, on application of the owner or master, shall be awarded by the collector of customs of the district in which the vessel is owned and a record thereof kept in the custom-house of the district in which the owner or managing owner resides. No numbers not so awarded shall be carried on the bows of such vessel. [— *Stat. L.* —.]

SEC. 3. [**Destruction or abandonment of vessels numbered — change of ownership — notice — numbering anew.**] That notice of destruction or abandonment of such vessels or change in their ownership shall be furnished within ten days by the owners to the collectors of customs of the districts where such numbers were awarded. Such vessel sold into another customs district may be numbered anew in the latter district. [— *Stat. L.* —.]

SEC. 4. [**Violation of Act — penalties — jurisdiction.**] That the penalty for violation of any provision of this Act shall be \$10, for which the vessel shall be liable and may be seized and proceeded against in the district court of the United States in any district in which such vessel may be found. Such penalty on application may be mitigated or remitted by the Secretary of Commerce. [— *Stat. L.* —.]

SEC. 5. [Regulation by Secretary of Commerce.] That the Secretary of Commerce shall make such regulations as may be necessary to secure proper execution of this Act by collectors of customs and other officers of the Government. [— *Stat. L.* —.]

SEC. 6. [Act when effective.] That this Act shall take effect six months after its passage. [— *Stat. L.* —.]

[Hydrographic office — detail of naval officers.] * * * That the Secretary of the Navy is authorized to detail such naval officers as may be necessary to the Hydrographic Office. [— *Stat. L.* —.]

This and the paragraph which follows are from the Naval Appropriation Act of July 1, 1918, ch. —.

[Bureau of Navigation — clerical force and office expenses.] * * * That the clerical force and office expenses provided for the Division of Naval Militia Affairs shall be transferred to the Bureau of Navigation. [— *Stat. L.* —.]

See note to the preceding paragraph of the text.

SOLDIERS' AND SAILORS' CIVIL RELIEF

Act of March 8, 1918, ch. —, 812.

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ARTICLE V.

TAXES AND PUBLIC LANDS.

SEC. 500. (1) [Taxes and assessments.] That the provisions of this section shall apply when any taxes or assessments, whether general or special, falling due during the period of military service in respect of real property owned and occupied for dwelling or business purposes by a person in military service or his dependents at the commencement of his period of military service and still so occupied by his dependents or employees are not paid. [— *Stat. L.* —.]

(2) [Enforcement of collection—stay.] When any person in military service, or any person in his behalf, shall file with the collector of taxes, or other officer whose duty it is to enforce the collection of taxes or assessments, an affidavit showing (a) that a tax or assessment has been assessed upon property which is the subject of this section, (b) that such tax or assessment is unpaid, and (c) that by reason of such military service the ability of such person to pay such tax or assessment is materially affected, no sale of such property shall be made to enforce the collection of such tax or assessment, or any proceeding or action for such purpose commenced, except upon leave of court granted upon an application made therefor by such collector or other officer. The court thereupon may stay such proceedings or such sale, as provided in this Act, for a period extending not more than six months after the termination of the war. [— *Stat. L.* —.]

(3) [Redemption of property sold or forfeited.] When by law such property may be sold or forfeited to enforce the collection of such tax or assessment, such person in military service shall have the right to redeem or commence an action to redeem such property, at any time not later than six months after the termination of such service, but in no case later than six months after the termination of the war; but this shall not be taken to shorten any period, now or hereafter provided by the laws of any State or Territory for such redemption. [— *Stat. L.* —.]

(4) [Unpaid taxes or assessments—interest—penalties.] Whenever any tax or assessment shall not be paid when due, such tax or assessment due and unpaid shall bear interest until paid at the rate of six per centum per annum, and no other penalty or interest shall be incurred by reason of such nonpayment. Any lien for such unpaid taxes or assessment shall also include such interest thereon. [— *Stat. L.* —.]

SEC. 501. [Public lands — entrymen and settlers in military service — protection of rights.] That no right to any public lands initiated or acquired prior to entering military service by any person under the homestead laws, the desert-land laws, the mining-land laws, or any other laws of the United States, shall be forfeited or prejudiced by reason of his absence from such land, or of his failure to perform any work or make any improvements thereon, or to do any other act required by any such law during the period of such service. Nothing in this section contained shall be construed to deprive a person in military service or his heirs or devisees of any benefits to which he or they may be entitled under the Act entitled "An Act for the relief of homestead entrymen or settlers who enter the military or naval service of the United States in time of war," approved July twenty-eighth, nineteen hundred and seventeen; the Act entitled "An Act for the protection of desert-land entrymen who enter the military or naval service of the United States in time of war," approved August seventh, nineteen hundred and seventeen; the Act entitled "An Act to provide further for the national security and defense by stimulating agriculture and facilitating the distribution of agricultural products," approved August tenth, nineteen hundred and seventeen; the joint resolution "To relieve the owners of mining claims who have been mustered into the military or naval service of the United States as officers or enlisted men, from performing assessment work during the term of such service," approved July seventeenth, nineteen hundred and seventeen; or any other Act or resolution of Congress: *Provided*, That nothing in this section contained shall be construed to limit or affect the right of a person in the military service to take any action during his term of service that may be authorized by law, or the regulations of the Interior Department thereunder, for the perfection, defense, or further assertion of rights initiated prior to the date of entering military service, and it shall be lawful for any person while in military service to make any affidavit or submit any proof that may be required by law, or the practice of the General Land Office in connection with the entry, perfection, defense, or further assertion of any rights initiated prior to entering military service, before the officer in immediate command and holding a commission in the branch of the service in which the party is engaged, which affidavits shall be as binding in law and with like penalties as if taken before the Register of the United States Land Office. [*— Stat. L. —.*]

For the Act of July 28, 1917, ch. —, and the Act of Aug. 7, 1917, ch. —, mentioned in the text, see **PUBLIC LANDS**, *ante*, p. 692 *et seq.*

For the Act of Aug. 10, 1917, ch. —, mentioned in the text, see **AGRICULTURE**, *ante*, p. 44.

For the Res. of July 17, 1917, No. —, mentioned in the text, see **MINERAL LANDS, MINES, AND MINING**, *ante*, p. 460.

ARTICLE VI.

ADMINISTRATIVE REMEDIES.

SEC. 600. [Transfers of property, etc., with intent to delay — effect on power of court to ignore provisions of Act.] That where in any proceeding to enforce a civil right in any court it is made to appear to the satisfaction of the court that any interest, property, or contract has since

the date of the approval of this Act been transferred or acquired with intent to delay the just enforcement of such right by taking advantage of this Act, the court shall enter such judgment or make such order as might lawfully be entered or made the provisions of this Act to the contrary notwithstanding. [— *Stat. L.* —.]

SEC. 601. (1) [**Evidence of military service.**] That in any proceeding under this Act a certificate signed by The Adjutant General of the Army as to persons in the Army or in any branch of the United States service while serving pursuant to law with the Army, signed by the Chief of the Bureau of Navigation of the Navy Department as to persons in the Navy or in any other branch of the United States service while serving pursuant to law with the Navy, and signed by the Major General, Commandant, United States Marine Corps, as to persons in the Marine Corps, or in any other branch of the United States service while serving pursuant to law with the Marine Corps, or signed by an officer designated by any of them, respectively, for the purpose, shall when produced be prima facie evidence as to any of the following facts stated in such certificate:

That a person named has not been, or is, or has been in military service; the time when and the place where such person entered military service, his residence at that time, and the rank, branch, and unit of such service that he entered, the dates within which he was in military service, the monthly pay received by such person at the date of issuing the certificate, the time when and place where such person died in or was discharged from such service.

It shall be the duty of the foregoing officers to furnish such certificate on application, and any such certificate when purporting to be signed by any one of such officers or by any person purporting upon the face of the certificate to have been so authorized shall be prima facie evidence of its contents and of the authority of the signer to issue the same. [— *Stat. L.* —.]

(2) [**Continuance in service—missing or dead persons.**] Where a person in military service has been reported missing he shall be presumed to continue in the service until accounted for, and no period herein limited which begins or ends with the death of such person shall begin or end until the death of such person is in fact reported to or found by the Department of War or Navy, or any court or board thereof, or until such death is found by a court of competent jurisdiction: *Provided*, That no period herein limited which begins or ends with the death of such person shall be extended hereby beyond a period of six months after the termination of the war. [— *Stat. L.* —.]

SEC. 602. [**Interlocutory orders.**] That any interlocutory order made by any court under the provisions of this Act may, upon the court's own motion or otherwise, be revoked, modified, or extended by it upon such notice to the parties affected as it may require. [— *Stat. L.* —.]

SEC. 603. [**Termination of Act.**] That this Act shall remain in force until the termination of the war, and for six months thereafter: *Provided*,

That wherever under any section or provision of this Act a proceeding, remedy, privilege, stay, limitation, accounting, or other transaction has been authorized or provided, the due exercise or enjoyment of which may extend beyond the period herein fixed for the termination of this Act, such section or provision shall be deemed to continue in full force and effect so long as may be necessary to the exercise or enjoyment of the proceeding, remedy, privilege, stay, limitation, accounting, or transaction aforesaid. [— *Stat. L.* —.]

SEC. 604. [Name of Act.] That this Act may be cited as the Soldiers' and Sailors' Civil Relief Act. [— *Stat. L.* —.]

STATE DEPARTMENT

Act of Oct. 6, 1917, ch. —, 825.

Sec. 1. Additional Employees, 825.

[SEC. 1.] [Additional employees.] * * * For additional employees in the Department of State, \$85,000: *Provided*, That not more than two persons shall be employed hereunder at a rate of compensation exceeding \$1,800 per annum. [— *Stat. L.* —.]

This is from the Deficiencies Appropriations Act of Oct. 6, 1917, ch. —.

STATISTICS

See CENSUS; COMMERCE DEPARTMENT.

STEAM VESSELS

Act of Feb. 14, 1917, ch. 63, 826.

Sec. 1. Number of Passengers Allowable — R. S. Sec. 4464 Amended, 826.

2. Penalty for Carrying too Great a Number of Passengers — R. S. Sec. 4465 Amended, 826.

3. Special Permit for Excursions — R. S. Sec. 4466 Amended, 827.

Act of March 29, 1918, ch. —, 827.

Passenger Vessels — Carrying Dangerous Articles — Petroleum Products, 827.

Act of May 11, 1918, ch. —, 828.

Sec. 1. Officers and Crew — Number — Certificate of Inspection — Entries — Deficiency in Crew — Penalty — R. S. Sec. 4463 Amended, 828.

2. Certificate of Inspection — Entries — Licensed Master — Licensed Mates — Increase of Licensed Officers, 828.

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Act of June 10, 1918, ch. — 829.

Sec. 1. Appeal from Board of Local Inspectors of Vessels and Supervising Inspectors — Application When Made — Counsel — Witnesses, 829.

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Act of July 2, 1918, ch. —, 831.

Supervising Inspector-General and Deputy Supervising Inspectors — Local and Other Inspectors — R. S. secs. 4402, 4404, 4414 amended, 831.

An Act To amend section forty-four hundred and sixty-four of the Revised Statutes of the United States, relating to number of passengers to be stated in certificates of inspection of passenger vessels, and section forty-four hundred and sixty-five of the Revised Statutes of the United States, prescribing penalty for carrying excessive number of passengers on passenger vessels, and section forty-four hundred and sixty-six of the Revised Statutes of the United States, relating to special permits for excursions on passenger steamers.

[Act of Feb. 14, 1917, ch. 63, 39 Stat. L. 918.]

[SEC. 1.] [Number of passengers allowable — R. S. sec. 4464 amended.]

That section forty-four hundred and sixty-four of the Revised Statutes of the United States be, and is hereby, amended so as to read as follows:

“ SEC. 4464. The board of local inspectors shall state in every certificate of inspection granted to vessels carrying passengers, other than ferryboats, the number of passengers of each class that any such vessel has accommodation for and can carry with prudence and safety. They shall report their action to the supervising inspector of the district, who may at any time order the number of such passengers decreased, giving his reasons therefor in writing and thereupon the board of local inspectors shall change the certificate of inspection of such vessel to conform with the decision of the supervising inspector. Whenever the allowance of passengers shall be increased by any board of local inspectors such increase shall be reported to the supervising inspector of the district, together with the reasons therefor, and such increase shall not become effective until the same has been approved in writing by the supervising inspector.”

[39 Stat. L. 918.]

For R. S. sec. 4464, amended by this section, see 7 Fed. Stat. Ann. 183; 9 Fed. Stat. Ann. (2d ed.) 451.

SEC. 2. [Penalty for carrying too great a number of passengers — R. S. sec. 4465 amended.] That section forty-four hundred and sixty-five of the

Revised Statutes of the United States be, and is hereby, amended so as to read as follows:

" SEC. 4465. It shall not be lawful to take on board of any vessel a greater number of passengers than is stated in the certificate of inspection, and for every violation of this provision the master or owner shall be liable to any person suing for the same to forfeit the amount of passage money and \$10 for each passenger beyond the number allowed.

" The master or owner of the vessel, or either or any of them, who shall knowingly violate this provision shall be liable to a fine of not more than \$100 or imprisonment of not more than thirty days, or both." [39 Stat. L. 918.]

For R. S. sec. 4465, amended by the text, see 7 Fed. Stat. Ann. 184; 9 Fed. Stat. Ann. (2d ed.) 452.

SEC. 3. [Special permit for excursions — R. S. sec. 4466 amended.] That section forty-four hundred and sixty-six of the Revised Statutes of the United States be, and is hereby, amended so as to read as follows:

" SEC. 4466. If any passenger vessel engages in excursions, the board of local inspectors shall issue to such vessel a special permit, in writing, for the occasion, in which shall be stated the additional number of passengers that may be carried and the number and kind of life-saving appliances that shall be provided for the safety of such additional passengers; and they shall also, in their discretion, limit the route and distance for such excursions: *Provided, however*, That the issuance of such special permit shall be reported by the board of local inspectors to the supervising inspector of the district, and such special permit shall not be effective until approved by the said supervising inspector." [39 Stat. L. 918.]

For R. S. sec. 4466, amended by this section, see 7 Fed. Stat. Ann. 164; 9 Fed. Stat. Ann. (2d ed.) 453.

An Act To permit the use of certain refined products of petroleum as stores on steam vessels carrying passengers.

[Act of March 29, 1918, ch. —, — Stat. L. —.]

[Passenger vessels — carrying dangerous articles — petroleum products.] That section forty-four hundred and seventy-two of the Revised Statutes of the United States of America be, and the same is hereby, amended by adding thereto the following provision: "*Provided, however*, That kerosene and lubricating oils made from refined products of petroleum which will stand a fire test of not less than three hundred degrees Fahrenheit may be used as stores on board steamers carrying passengers, under such regulations as shall be prescribed by the Board of Supervising Inspectors with the approval of the Secretary of Commerce." [— Stat. L. —.]

For R. S. sec. 4472, see 7 Fed. Stat. Ann. 187; 9 Fed. Stat. Ann. (2d ed.) 458.

An Act To amend the Act of March third, nineteen hundred and thirteen, entitled "An Act to regulate the officering and manning of vessels subject to the inspection laws of the United States."

[*Act of May 11, 1918, ch. —, — Stat. L. —.*]

[**SEC. 1.] [Officers and crew — number — certificate of inspection — entries — deficiency in crew — penalty — R. S. sec. 4463 amended.]** That section forty-four hundred and sixty-three of the Revised Statutes of the United States be, and it is hereby, amended to read as follows:

"SEC. 4463. No vessel of the United States subject to the provisions of this title or to the inspection laws of the United States shall be navigated unless she shall have in her service and on board such complement of licensed officers and crew including certificated lifeboat men, separately stated, as may, in the judgment of the local inspectors who inspect the vessel, be necessary for her safe navigation. The local inspectors shall make in the certificate of inspection of the vessel an entry of such complement of officers and crew including certificated lifeboat men, separately stated, which may be changed from time to time by indorsement on such certificate by local inspectors by reason of change of conditions or employment. Such entry or indorsement shall be subject to a right of appeal, under regulations to be made by the Secretary of Commerce, to the supervising inspector and from him to the Supervising Inspector General, who shall have the power to revise, set aside, or affirm the said determination of the local inspectors.

"If any such vessel is deprived of the services of any number of the crew including certificated lifeboat men, separately stated, without the consent, fault, or collusion of the master, owner, or any person interested in the vessel, the vessel may proceed on her voyage if, in the judgment of the master, she is sufficiently manned for such voyage: *Provided*, That the master shall ship, if obtainable, a number equal to the number of those whose services he has been deprived of by desertion or casualty, who must be of the same grade or of a higher rating with those whose places they fill. If the master shall fail to explain in writing the cause of such deficiency in the crew including certificated lifeboat men, separately stated, to the local inspectors within twelve hours of the time of the arrival of the vessel at her destination, he shall be liable to a penalty of \$50. If the vessel shall not be manned as provided in this Act, the owner shall be liable to a penalty of \$100, or in case of an insufficient number of licensed officers to a penalty of \$500." [*— Stat. L. —.*]

For R. S. sec. 4463, before amendment, see 7 Fed. Stat. Ann. 181; 9 Fed. Stat. Ann. (2d ed.) 449.

SEC. 2. [Certificate of inspection — entries — licensed master — licensed mates — increase of licensed officers.] That the board of local inspectors shall make an entry in the certificate of inspection of every ocean and coastwise seagoing merchant vessel of the United States propelled by machinery, and every ocean-going vessel carrying passengers, the minimum number of licensed deck officers required for her safe navigation according to the following scale:

That no such vessel shall be navigated unless she shall have on board and in her service one duly licensed master.

That every such vessel of one thousand gross tons and over, propelled by machinery, shall have in her service and on board three licensed mates, who shall stand in three watches while such vessel is being navigated, unless such vessel is engaged in a run of less than four hundred miles from the port of departure to the port of final destination, then such vessel shall have two licensed mates; and every vessel of two hundred gross tons and less than one thousand gross tons, propelled by machinery, shall have two licensed mates.

That every such vessel of one hundred gross tons and under two hundred gross tons, propelled by machinery, shall have on board and in her service one licensed mate, but if such vessel is engaged in a trade in which the time required to make the passage from the port of departure to the port of destination exceeds twenty-four hours, then such vessel shall have two licensed mates.

That nothing in this section shall be so construed as to prevent local inspectors from increasing the number of licensed officers on any vessel subject to the inspection laws of the United States, if, in their judgment, such vessel is not sufficiently manned for her safe navigation: *Provided*, That this section shall not apply to fishing or whaling vessels, yachts, or motor boats as defined in the Act of June ninth, nineteen hundred and ten, or to wrecking vessels. [— *Stat. L.* —.]

SEC. 3. [Period of duty of officers.] That it shall be unlawful for the master, owner, agent, or other person having authority to permit an officer of any vessel to take charge of the deck watch of the vessel upon leaving or immediately after leaving port, unless such officer shall have had at least six hours off duty within the twelve hours immediately preceding the time of sailing, and no licensed officer on any ocean or coastwise vessel shall be required to do duty to exceed nine hours of any twenty-four while in port, including the date of arrival, or more than twelve hours of any twenty-four at sea, except in a case of emergency when life or property is endangered. Any violation of this section shall subject the person or persons guilty thereof to a penalty of \$100. [— *Stat. L.* —.]

SEC. 4. [Repeal of conflicting laws.] That all laws or parts of laws in conflict with this Act are hereby repealed. [— *Stat. L.* —.]

An Act To provide for appeals from decisions of boards of local inspectors of vessels, and for other purposes.

[Act of June 10, 1918, ch. —, — *Stat. L.* —.]

[SEC. 1.] Appeal from board of local inspectors of vessels and supervising inspectors — application when made — counsel — witnesses.] That whenever any person directly interested in or affected by any decision or action of any board of local inspectors of vessels shall feel aggrieved

by such decision or action, he may appeal therefrom to the supervising inspector of the district; and a like appeal shall be allowed from any decision or action of a supervising inspector to the Supervising Inspector General, whose decision, when approved by the Secretary of Commerce, shall be final: *Provided, however*, That application for such reexamination of the case by a supervising inspector or by the Supervising Inspector General shall be made within thirty days after the decision or action appealed from shall have been rendered or taken: *And provided further*, That in all cases reviewed under the provisions of this Act where the issue is the suspension or revocation of the license of a licensed officer such officer shall be allowed to be represented by counsel and to testify in his own behalf. [— *Stat. L.* —.]

SEC. 2. [Disagreement between local inspectors — reporting case for review — authority of supervising inspectors and Supervising Inspector general to review.] That whenever there shall be a disagreement between the local inspectors in regard to any matter before them for decision they shall report the case to the supervising inspector of the district, who shall investigate and decide the same. Any supervising inspector may within thirty days thereafter, upon his own motion, review any decision or action of any board of local inspectors within his district and in like manner the Supervising Inspector General may within thirty days thereafter review any decision or action of any supervising inspector or board of local inspectors, and the decision of the Supervising Inspector General in such case shall, when approved by the Secretary of Commerce, be final. [— *Stat. L.* —.]

SEC. 3. [Authority of reviewing officers to revoke, change or modify decisions — authority as to witnesses.] That any decision or action reviewed by the Supervising Inspector General or by any supervising inspector, as provided in sections one and two of this Act, may be revoked, changed, or modified by such reviewing officer, who shall have power to administer oaths and to summon and compel the attendance of witnesses by a similar process as in the district courts of the United States; and the disbursing clerk, Department of Commerce, shall pay, on properly certified vouchers, such fees to any witness so summoned for his actual travel and attendance as shall be officially certified to by the officer reviewing the case, not exceeding the rate allowed for fees to witnesses for travel and attendance in the district courts of the United States. [— *Stat. L.* —.]

SEC. 4. [Regulations by Secretary of Commerce.] That the Secretary of Commerce shall make such regulations as may be necessary to secure a proper enforcement of the provisions of this Act. [— *Stat. L.* —.]

SEC. 5. [R. S. 4452 repealed.] That section forty-four hundred and fifty-two of the Revised Statutes, as amended by section six of the Act of March third, nineteen hundred and five, is hereby repealed. [— *Stat. L.* —.]

For R. S. sec. 4452, see 10 Fed. Stat. Ann. 248; 6 Fed. Stat. Ann. (2d ed.) 1261.

An Act To amend sections forty-four hundred and two, forty-four hundred and four, and forty-four hundred and fourteen of the Revised Statutes of the United States.

[*Act of July 2, 1918, ch. —, — Stat. L. —.*]

[Supervising inspector general and deputy supervising inspectors — local and other inspectors — *R. S. secs. 4402, 4404, 4414* amended.] That sections forty-four hundred and two, forty-four hundred and four, and forty-four hundred and fourteen of the Revised Statutes of the United States be, and they are hereby, amended to read as follows:

“ SEC. 4402. That there shall be a supervising inspector general, who shall be appointed from time to time by the President, by and with the advice and consent of the Senate, and who shall be selected with reference to his fitness and ability to systematize and carry into effect all the provisions of law relating to the Steamboat-Inspection Service, and who shall be entitled to a salary of \$5,000 a year and his actual necessary traveling expenses while traveling on official business assigned to him by competent authority, together with his actual and reasonable expenses for transportation of instruments, which shall be certified and sworn to, under such instructions as shall be given by the Secretary of Commerce.

“ The Secretary of Commerce may appoint a deputy supervising inspector general, who shall be the chief clerk of the bureau and in the absence of the supervising inspector general have power to act in his stead, and who shall be entitled to a salary of \$3,000 per year.

“ SEC. 4404. There shall be eleven supervising inspectors, who shall be appointed by the President, by and with the advice and consent of the Senate. Each of them shall be selected for his knowledge, skill, and practical experience in the uses of steam for navigation, and shall be a competent judge of the character and qualities of steam vessels and of all parts of the machinery employed in steaming. Each supervising inspector shall be entitled to a salary of \$3,450 a year and his actual necessary traveling expenses while traveling on official business assigned him by competent authority, together with his actual and reasonable expenses for transportation of instruments, which shall be certified and sworn to under such instructions as shall be given by the Secretary of Commerce.

“ SEC. 4414. There shall be in each of the following collection districts, namely, the districts of Philadelphia, Pennsylvania; San Francisco, California; New London, Connecticut; Baltimore, Maryland; Detroit, Michigan; Chicago, Illinois; Bangor, Maine; New Haven, Connecticut; Michigan, Michigan; Milwaukee, Wisconsin; Willamette, Oregon; Puget Sound, Washington; Savannah, Georgia; Pittsburgh, Pennsylvania; Oswego, New York; Charleston, South Carolina; Duluth, Minnesota; Superior, Michigan; Apalachicola, Florida; Galveston, Texas; Mobile, Alabama; Providence, Rhode Island; and in each of the following ports: New York, New York; Jacksonville, Florida; Tampa, Florida; Portland, Maine; Boston, Massachusetts; Buffalo, New York; Cleveland, Ohio; Toledo, Ohio; Norfolk, Virginia; Evansville, Indiana; Dubuque, Iowa; Louisville, Kentucky; Albany, New York; Cincinnati, Ohio; Memphis, Tennessee; Nashville, Tennessee; Saint Louis, Missouri; Port Huron, Michigan; New Orleans, Louisiana; Los Angeles, California; Juneau, Alaska; Saint Michael,

Alaska; Point Pleasant, West Virginia; and Burlington, Vermont; Honolulu, Hawaii; and San Juan, Porto Rico; one inspector of hulls and one inspector of boilers.

"The inspector of hulls and the inspector of boilers in the districts and ports enumerated in the preceding paragraphs shall be entitled to the following salaries, to be paid under the direction of the Secretary of Commerce, namely:

"For the port of New York, New York; at the rate of \$2,950 per year for each local inspector.

"For the districts of Philadelphia, Pennsylvania; Baltimore, Maryland; San Francisco, California; and Puget Sound, Washington; and the ports of Boston, Massachusetts; Buffalo, New York; and New Orleans, Louisiana; at the rate of \$2,700 per year for each local inspector.

"For the districts of Michigan, Michigan; Milwaukee, Wisconsin; Duluth, Minnesota; Providence, Rhode Island; Chicago, Illinois; and the ports of Albany, New York; Cleveland, Ohio; Portland, Maine; Los Angeles, California; Juneau, Alaska; Saint Michael, Alaska; and Norfolk, Virginia; Honolulu, Hawaii; and San Juan, Porto Rico; at the rate of \$2,500 per year for each local inspector.

"For the districts of Oswego, New York; Willamette, Oregon; Detroit, Michigan; and Mobile, Alabama; and the ports of Saint Louis, Missouri; and Port Huron, Michigan; at the rate of \$2,350 per year for each local inspector.

"For the districts of Pittsburgh, Pennsylvania; New Haven, Connecticut; Savannah, Georgia; Charleston, South Carolina; Galveston, Texas; New London, Connecticut; Superior, Michigan; Bangor, Maine; and Apalachicola, Florida; and the ports of Dubuque, Iowa; Toledo, Ohio; Evansville, Indiana; Memphis, Tennessee; Nashville, Tennessee; Point Pleasant, West Virginia; Burlington, Vermont; Jacksonville, Florida; Tampa, Florida; Louisville, Kentucky; and Cincinnati, Ohio; at the rate of \$2,100 per year for each local inspector.

"And in addition the Secretary of Commerce may appoint, in districts or ports where the volume of work requires them, assistant inspectors, at a salary, for the port of New York, \$2,500 a year each; for the port of New Orleans, Louisiana; the districts of Philadelphia, Pennsylvania; Baltimore, Maryland; the ports of Boston, Massachusetts; Providence, Rhode Island; and the district of San Francisco, California, at \$2,350 per year each, and for all other districts and ports at a salary of \$2,100 a year each; and he may appoint a clerk to any such board at a compensation not exceeding \$1,500 a year to each person so appointed. Every inspector provided for in this or the preceding sections of this title shall be paid his actual necessary traveling expenses while traveling on official business assigned him by competent authority, together with his actual and reasonable expenses for transportation of instruments, which shall be certified and sworn to under such instructions as shall be given by the Secretary of Commerce.

"Assistant inspectors, appointed as provided by law, shall perform such duties of actual inspection as may be assigned to them under the direction, supervision, and control of the local inspectors.

"The Secretary of Commerce may appoint not exceeding four traveling

inspectors when in his judgment they are necessary for the improvement of the service, each of whom shall be entitled to a salary of \$3,000 a year and his actual and necessary traveling expenses while traveling on official business.

“That all officers and employees provided for in this Act shall not receive the additional compensation authorized by section six of the Act making appropriations for the legislative, executive, and judicial expenses of the Government for the fiscal year ending June thirtieth, nineteen hundred and nineteen.

“And the Secretary of Commerce may from time to time detail said assistant inspectors of one port or district for service in any other port or district, as the needs of the Steamboat-Inspection Service may, in his discretion, require, and the actual necessary traveling expenses of assistant inspectors so detailed, while traveling on official business assigned them by competent authority, shall, subject to such limitations as the said Secretary may in his discretion prescribe, be paid in the same manner as provided in this section for inspection.

“Assistant inspectors, appointed as provided by law, shall perform such duties of actual inspection as may be assigned to them under the direction, supervision, and control of the local inspectors.

“The Secretary of Commerce may appoint not exceeding four traveling inspectors, when in his judgment they are necessary for the improvement of the service, each of whom shall be entitled to a salary of \$3,000 a year and his actual necessary traveling expenses while traveling on official business.

“That all officers and employees provided for in this Act shall not receive the additional compensation authorized by section six of the Act making appropriations for legislative, executive, and judicial expenses of the Government for the fiscal year ending June thirtieth, nineteen hundred and nineteen.

“And the Secretary of Commerce may from time to time detail said assistant inspectors of one port or district for service in any other port or district, as the needs of the Steamboat-Inspection Service may, in his discretion, require, and the actual necessary traveling expenses of assistant inspectors so detailed, while traveling on official business assigned them by competent authority, shall, subject to such limitations as the said Secretary may in his discretion prescribe, be paid in the same manner as provided in this section for inspection.” [— Stat. L. —.]

For R. S. sec. 4402, 4404 and 4414, amended by this Act, see 7 Fed. Stat. Ann. 163, 166; 9 Fed. Stat. Ann. (2d ed.) 420, 421, 425.

R. S. sec. 4414 had previously been amended by the Act of Feb. 26, 1917, ch. 125, 39 Stat. L. 942, which provided as follows:

“That the first and seventh paragraphs of section forty-four hundred and fourteen of the Revised Statutes of the United States, as amended by the Act of April ninth, nineteen hundred and six, be amended by inserting after the words ‘Jacksonville, Florida,’ in each paragraph, the words ‘Tampa, Florida.’”

TARIFF COMMISSION

See CUSTOMS DUTIES.

TAXATION

See INTERNAL REVENUE

TELEGRAPHS, TELEPHONES AND CABLES

Res. of July 16, 1918, No. —, 834.

Government Control of Wires and Radio Systems — Compensation, 834.

Joint Resolution To authorize the President, in time of war, to supervise or take possession and assume control of any telegraph, telephone, marine cable, or radio system or systems or any part thereof and to operate the same in such manner as may be needful or desirable for the duration of the war, and to provide just compensation therefor.

[Res. of July 16, 1918, No. —, — Stat. L. —.]

[Government control of wires and radio systems—compensation.]

That the President during the continuance of the present war is authorized and empowered, whenever he shall deem it necessary for the national security or defense, to supervise or to take possession and assume control of any telegraph, telephone, marine cable, or radio system or systems, or any part thereof, and to operate the same in such manner as may be needful or desirable for the duration of the war, which supervision, possession, control, or operation shall not extend beyond the date of the proclamation by the President of the exchange of ratifications of the treaty of peace: *Provided*, That just compensation shall be made for such supervision, possession, control, or operation, to be determined by the President; and if the amount thereof, so determined by the President, is unsatisfactory to the person entitled to receive the same, such person shall be paid seventy-five per centum of the amount so determined by the President and shall be entitled to sue the United States to recover such further sum as, added to said seventy-five per centum, will make up such amount as will be just compensation therefor, in the manner provided for by section twenty-four, paragraph twenty, and section one hundred and forty-five of the Judicial Code: *Provided further*, That nothing in this Act shall be construed to amend, repeal, impair, or affect existing laws or powers of the States in relation to taxation or the lawful police regulations of the several States, except wherein such laws, powers, or regulations may affect the transmission of Government communications, or the issue of stocks and bonds by such system or systems. *[— Stat. L. —.]*

TERRITORIES

See PHILIPPINE ISLANDS; PORTO RICO; WEST INDIAN ISLANDS.

THREATS AGAINST PRESIDENT

See PRESIDENT

THRIFT STAMPS

See PUBLIC DEBT

TIMBER LANDS AND FOREST RESERVES

*Act of July 3, 1916, ch. 218, 835.**Florida National Forest — Consolidation of Lands, 835.**Act of July 11, 1916, ch. 241, 836.**Sec. 8. Roads in and Adjacent to National Forests — Appropriation, 836.**Act of Aug. 8, 1916, ch. 295, 837.**Forest Reserves — Entry of Agricultural Lands within — Former Act Repealed, 837.**Act of Aug. 11, 1916, ch. 313, 837.**Sec. 1. Forest Reserves — Deposits by Timber Purchasers — Purpose, 837.**Protection of Game, etc., on Forest Reserve, 837.**Act of Sept. 8, 1916, ch. 469, 838.**Pike National Forest — Reservation of Land, 838.**Act of Sept. 8, 1916, ch. 471, 838.**Oregon National Forest — Consolidation of Lands, 838.**Act of Sept. 8, 1916, ch. 474, 838.**Colorado and Pike National Forests — Enlargement of Boundaries, 838.**Act of Sept. 8, 1916, ch. 476, 841.**Sec. 1. Whitman National Forest — Adjustment of Boundaries, 841.**2. Authority of Secretary of Interior to Accept Title to Lands — Exchange, 841.**Act of March 4, 1911, ch. 186, 841.**National Forests at Headwaters — Permits for Hunting, etc. — Disposition of Moneys Received, 841.**National Forests at Headwaters — Development of Mineral Resources — Disposition of Moneys Received, 842.**Act of June 12, 1917, ch. —, 842.**Sec. 1. North Carolina Forest Reserve — Acceptance of Lands, etc., 842.*

CROSS-REFERENCES

See also PUBLIC LANDS; PUBLIC PARKS.

An Act To consolidate certain forest lands in the Florida National Forest.[*Act of July 3, 1916, ch. 218, 39 Stat. L. 344.*]**[Florida National Forest — consolidation of lands.]** That the Secretary of the Interior, for the purpose of consolidating the forest lands belonging

disturb or kill any kind of game animal, game or nongame bird, or fish, or take the eggs of any such bird on any lands so set aside, or in or on the waters thereof, except under such general rules and regulations as the Secretary of Agriculture may from time to time prescribe, shall be fined not more than \$500 or imprisoned not more than six months, or both. [39 Stat. L. 476.]

See the note to the preceding paragraph of the text.

For the Act of March 1, 1911, ch. 186, mentioned in the text, see 1912 Supp. Fed. Stat. Ann. 390; 9 Fed. Stat. Ann. (2d ed.) 597.

An Act To reserve certain lands and make them a part of the Pike National Forest.

[Act of Sept. 8, 1916, ch. 469, 39 Stat. L. 844.]

[**Pike National Forest — reservation of land.**] That all lands in the State of Colorado described as follows, to wit: Section nineteen and section thirty in township two south, range seventy-two west, sixth principal base and meridian, be, and the same are hereby, reserved, subject to all prior valid adverse rights, and made a part of and included in the Pike National Forest. [39 Stat. L. 844.]

An Act To consolidate certain forest lands in the Oregon National Forest, in the State of Oregon.

[Act of Sept. 8, 1916, ch. 471, 39 Stat. L. 846.]

[**Oregon National Forest — consolidation of lands.**] That for the purpose of consolidating forest lands belonging to the United States within the Oregon National Forest, the Secretary of the Interior be, and he hereby is, authorized and empowered, upon the recommendation of the Secretary of Agriculture, to exchange, upon the basis of equal value, lands belonging to the United States in the Oregon National Forest for privately owned lands lying within the exterior limits of the Oregon National Forest; and upon the consummation of such exchanges the lands deeded to the United States shall become parts of the Oregon National Forest. [39 Stat. L. 846.]

An Act Authorizing the addition of certain lands to the Colorado and Pike National Forests, Colorado.

[Act of Sept. 8, 1916, ch. 474, 39 Stat. L. 848.]

[**Colorado and Pike National Forests — enlargement of boundaries.**] That any lands within the following-described areas, found to be chiefly valuable for the production of timber or the protection of stream flow, may be included within and made parts of the Colorado or Pike National Forests by proclamation of the President, said lands to be thereafter subject to all laws affecting national forests, and as otherwise provided herein.

Sixth principal meridian and base, State of Colorado:

Township one north, range seventy-one west: Sections twenty-nine to thirty-two, inclusive.

Township one north, range seventy-two west: Sections one to eleven inclusive; sections fourteen to twenty-three, inclusive; sections twenty-five to twenty-eight, inclusive; sections thirty-three to thirty-six, inclusive.

Township two north, range seventy-one west: Sections two to ten, inclusive; sections fifteen to twenty-two, inclusive; sections twenty-seven to thirty-four, inclusive.

All of township two north, range seventy-two west.

Township two north, range seventy-three west: All of section thirty-six.

Township three north, range seventy-one west: Sections four to nine, inclusive; sections seventeen to twenty-one, inclusive; sections twenty-six to twenty-nine, inclusive; north half of section thirty; south half of section thirty-one; sections thirty-two to thirty-five, inclusive.

Township three north, range seventy-two west: Sections one to thirty-five, inclusive.

Township three north, range seventy-three west: Sections one, two, eleven, twelve, thirteen, fourteen, twenty-three, twenty-four, twenty-five, twenty-six, thirty-five, and thirty-six.

Township four north, range seventy-one west: Sections three to ten, inclusive; west half of section fourteen; sections fifteen to twenty-three, inclusive; sections twenty-six to thirty-three, inclusive.

Township four north, range seventy-two west: Sections one to five, inclusive; east half of section six; east half of section seven; sections eight to thirty, inclusive; that portion of section thirty-one lying north and east of the main hydrographic divide east of Cow Creek; sections thirty-two to thirty-six, inclusive.

Township four north, range seventy-three west: All those portions of sections ten, eleven, twelve, thirteen, fourteen, fifteen, twenty-two, twenty-three, twenty-four, twenty-five, and thirty-six lying north and east of the divide between Aspen Brook and Fish Creek, Aspen Brook and Lily Lake, and of the main hydrographic divide east of Cow Creek.

Township five north, range seventy west: Sections four to nine, inclusive; sections seventeen and eighteen; north half of section nineteen; north half of section twenty.

Township five north, range seventy-one west: Sections one to fourteen, inclusive; north half and southeast quarter of section fifteen; sections seventeen to twenty-one, inclusive; sections twenty-seven to thirty-four, inclusive; west half of section thirty-five.

Township five north, range seventy-two west: Sections one to five, inclusive; sections ten to fifteen, inclusive; sections twenty-one to twenty-eight, inclusive; east half of section thirty-two; sections thirty-three to thirty-six, inclusive.

Township six north, range seventy west: Sections seven, eight, seventeen, eighteen, nineteen, and twenty; west half of section twenty-one; west half of section twenty-eight; sections twenty-nine to thirty-three, inclusive.

All of township six north, range seventy-one west.

Township six north, range seventy-two west: Sections one, twelve,

disturb or kill any kind of game animal, game or nongame bird, or fish, or take the eggs of any such bird on any lands so set aside, or in or on the waters thereof, except under such general rules and regulations as the Secretary of Agriculture may from time to time prescribe, shall be fined not more than \$500 or imprisoned not more than six months, or both. [39 Stat. L. 476.]

See the note to the preceding paragraph of the text.

For the Act of March 1, 1911, ch. 186, mentioned in the text, see 1912 Supp. Fed. Stat. Ann. 390; 9 Fed. Stat. Ann. (2d ed.) 597.

An Act To reserve certain lands and make them a part of the Pike National Forest.

[Act of Sept. 8, 1916, ch. 469, 39 Stat. L. 844.]

[Pike National Forest—reservation of land.] That all lands in the State of Colorado described as follows, to wit: Section nineteen and section thirty in township two south, range seventy-two west, sixth principal base and meridian, be, and the same are hereby, reserved, subject to all prior valid adverse rights, and made a part of and included in the Pike National Forest. [39 Stat. L. 844.]

An Act To consolidate certain forest lands in the Oregon National Forest, in the State of Oregon.

[Act of Sept. 8, 1916, ch. 471, 39 Stat. L. 846.]

[Oregon National Forest—consolidation of lands.] That for the purpose of consolidating forest lands belonging to the United States within the Oregon National Forest, the Secretary of the Interior be, and he hereby is, authorized and empowered, upon the recommendation of the Secretary of Agriculture, to exchange, upon the basis of equal value, lands belonging to the United States in the Oregon National Forest for privately owned lands lying within the exterior limits of the Oregon National Forest; and upon the consummation of such exchanges the lands deeded to the United States shall become parts of the Oregon National Forest. [39 Stat. L. 846.]

An Act Authorizing the addition of certain lands to the Colorado and Pike National Forests, Colorado.

[Act of Sept. 8, 1916, ch. 474, 39 Stat. L. 848.]

[Colorado and Pike National Forests—enlargement of boundaries.] That any lands within the following-described areas, found to be chiefly valuable for the production of timber or the protection of stream flow, may be included within and made parts of the Colorado or Pike National Forests by proclamation of the President, said lands to be thereafter subject to all laws affecting national forests, and as otherwise provided herein.

Sixth principal meridian and base, State of Colorado:

Township one north, range seventy-one west: Sections twenty-nine to thirty-two, inclusive.

Township one north, range seventy-two west: Sections one to eleven inclusive; sections fourteen to twenty-three, inclusive; sections twenty-five to twenty-eight, inclusive; sections thirty-three to thirty-six, inclusive.

Township two north, range seventy-one west: Sections two to ten, inclusive; sections fifteen to twenty-two, inclusive; sections twenty-seven to thirty-four, inclusive.

All of township two north, range seventy-two west.

Township two north, range seventy-three west: All of section thirty-six.

Township three north, range seventy-one west: Sections four to nine, inclusive; sections seventeen to twenty-one, inclusive; sections twenty-six to twenty-nine, inclusive; north half of section thirty; south half of section thirty-one; sections thirty-two to thirty-five, inclusive.

Township three north, range seventy-two west: Sections one to thirty-five, inclusive.

Township three north, range seventy-three west: Sections one, two, eleven, twelve, thirteen, fourteen, twenty-three, twenty-four, twenty-five, twenty-six, thirty-five, and thirty-six.

Township four north, range seventy-one west: Sections three to ten, inclusive; west half of section fourteen; sections fifteen to twenty-three, inclusive; sections twenty-six to thirty-three, inclusive.

Township four north, range seventy-two west: Sections one to five, inclusive; east half of section six; east half of section seven; sections eight to thirty, inclusive; that portion of section thirty-one lying north and east of the main hydrographic divide east of Cow Creek; sections thirty-two to thirty-six, inclusive.

Township four north, range seventy-three west: All those portions of sections ten, eleven, twelve, thirteen, fourteen, fifteen, twenty-two, twenty-three, twenty-four, twenty-five, and thirty-six lying north and east of the divide between Aspen Brook and Fish Creek, Aspen Brook and Lily Lake, and of the main hydrographic divide east of Cow Creek.

Township five north, range seventy west: Sections four to nine, inclusive; sections seventeen and eighteen; north half of section nineteen; north half of section twenty.

Township five north, range seventy-one west: Sections one to fourteen, inclusive; north half and southeast quarter of section fifteen; sections seventeen to twenty-one, inclusive; sections twenty-seven to thirty-four, inclusive; west half of section thirty-five.

Township five north, range seventy-two west: Sections one to five, inclusive; sections ten to fifteen, inclusive; sections twenty-one to twenty-eight, inclusive; east half of section thirty-two; sections thirty-three to thirty-six, inclusive.

Township six north, range seventy west: Sections seven, eight, seventeen, eighteen, nineteen, and twenty; west half of section twenty-one; west half of section twenty-eight; sections twenty-nine to thirty-three, inclusive.

All of township six north, range seventy-one west.

Township six north, range seventy-two west: Sections one, twelve,

thirteen, fourteen, and fifteen; sections twenty-two to twenty-eight, inclusive; sections thirty-two to thirty-six, inclusive.

Township seven north, range seventy west: Sections two to eleven, inclusive; sections fourteen to thirty, inclusive; north half of section thirty-two; sections thirty-three, thirty-four, and thirty-five.

Township seven north, range seventy-one west: Sections one to thirty-five, inclusive.

Township seven north, range seventy-two west: All of section one; east half of section two; sections ten to fifteen, inclusive; sections twenty-two, twenty-three, twenty-four, twenty-five, and thirty-six.

Township eight north, range seventy west: West half of section four; sections five to eight, inclusive; west half of section nine; sections seventeen to twenty-two, inclusive; sections twenty-seven to thirty-five, inclusive.

All of township eight north, range seventy-one west.

Township eight north, range seventy-two west: All of section one.

Township nine north, range seventy west: Sections seven to ten, inclusive; sections fourteen to twenty-three, inclusive; sections twenty-eight to thirty-three, inclusive.

Township nine north, range seventy-one west: Sections twelve and thirteen; sections twenty-four to thirty-six, inclusive.

All of township nine north, range seventy-two west.

Township nine north, range seventy-three west: Sections one to six, inclusive; sections nine to sixteen, inclusive; sections twenty-one to twenty-eight, inclusive; sections thirty-three to thirty-six, inclusive.

Township ten north, range seventy-two west: Sections two to eleven, inclusive; north half of section twelve; sections fourteen to twenty-four, inclusive; sections twenty-six to thirty-five, inclusive.

All of township ten north, range seventy-three west.

Township ten north, range seventy-four west: Sections one to four, inclusive; sections ten, eleven, twelve, thirteen, twenty-four, and twenty-five.

Township eleven north, range seventy-two west: Sections two to eleven, inclusive; north half of section twelve; sections fourteen to twenty-four, inclusive; sections twenty-six to thirty-four, inclusive.

All of township eleven north, range seventy-three west.

Township eleven north, range seventy-four west: Sections two to six, inclusive; sections eight to thirty-six, inclusive.

Township eleven north, range seventy-five west: Sections six, seven, eight, and fourteen; sections seventeen to thirty-one, inclusive.

Township twelve north, range seventy-two west: Fractional sections nineteen and twenty; sections twenty-eight to thirty-four, inclusive.

Township twelve north, range seventy-three west: Fractional sections nineteen to twenty-four, inclusive; sections twenty-five to thirty, inclusive; sections thirty-two to thirty-six, inclusive.

Township twelve north, range seventy-four west: Fractional sections twenty-three and twenty-four; section twenty-six.

Township one south, range seventy-one west: Sections four to seven, inclusive; west half and northeast quarter of section eight; north half of section nine; west half of section seventeen; sections eighteen and nineteen; west half of section twenty; northwest quarter of section twenty-nine; north half of section thirty.

Township one south, range seventy-two west: Sections one to four, inclusive; sections nine to sixteen, inclusive; sections twenty-one to twenty-eight, inclusive; sections thirty-one to thirty-six, inclusive.

Township two south, range seventy-one west: Sections two to ten, inclusive.

Township two south, range seventy-two west: Sections one to twelve, inclusive.

Provided, That the Secretary of the Interior may, in his discretion, continue thereafter to allow additional entries, within the previously described areas, under the provisions of section three of the Act approved February nineteenth, nineteen hundred and nine, entitled "An Act to provide for an enlarged homestead," as amended by the Act approved March third, nineteen hundred and fifteen (Thirty-eighth Statutes, page nine hundred and fifty-six). [39 Stat. L. 848.]

For the Act of Feb. 19, 1909, ch. 160, § 3, mentioned in the text, see 1909 Supp. Fed. Stat. Ann. 560.

For the amendatory Act of March 3, 1915, ch. 91, mentioned in the text, see 1916 Supp. Fed. Stat. Ann. 198.

For said Act of Feb. 19, 1909, ch. 160, § 3, as amended by said Act of March 3, 1915, ch. 91, see 8 Fed. Stat. Ann. (2d ed.) 613.

An Act Authorizing an adjustment of the boundaries of the Whitman National Forest, in the State of Oregon, and for other purposes.

[Act of Sept. 8, 1916, ch. 476, 39 Stat. L. 852.]

[SEC. 1.] **[Whitman National Forest—adjustment of boundaries.]** That any land within the following-described areas found by the Secretary of Agriculture to be chiefly valuable for the production of timber or for the protection of stream flow may be included within and made part of the Whitman National Forest, in the State of Oregon, by proclamation of the President, said lands to be thereafter subject to all laws affecting national forests: Township eleven south, range thirty-four east; townships eleven and twelve south, range thirty-five east; township ten south, range thirty-five and one-half east; townships ten and eleven south, range thirty-six east, Willamette meridian, in the State of Oregon. [39 Stat. L. 852.]

SEC. 2. **[Authority of Secretary of Interior to accept title to lands—exchange.]** That the Secretary of the Interior be, and hereby is, authorized to accept on behalf of the United States title to any lands in private ownership within established boundaries of the said Whitman National Forest which, in the opinion of the Secretary of Agriculture, are chiefly valuable for the production of timber or the protection of stream flow, and in lieu thereof may give in exchange such Government timber in or near the Whitman National Forest as may be determined by the Secretary of Agriculture to be of approximately equal value; and any reconveyed lands shall, upon acceptance, become subject to all laws affecting national forests. [39 Stat. L. 852.]

[National forests at headwaters—permits for hunting, etc.—disposition of moneys received.] * * * That hereafter all moneys received

on account of permits for hunting, fishing, or camping, on lands acquired under authority of said Act, or any amendment or extension thereof, shall be disposed of as is provided by existing law for the disposition of receipts from national forests. [39 Stat. L. 1149.]

This and the following paragraph of the text are from the Agricultural Appropriation Act of March 4, 1917, ch. 179.

The Act to which reference is made in the text is the Act of March 1, 1911, ch. 186. See 1912 Supp. Fed. Stat. Ann. 390; 9 Fed. Stat. Ann. (2d ed.) 597.

[National forests at headwaters — development of mineral resources — disposition of moneys received.] The Secretary of Agriculture is authorized, under general regulations to be prescribed by him, to permit the prospecting, development, and utilization of the mineral resources of the lands acquired under the Act of March first, nineteen hundred and eleven (Thirty-sixth Statutes, page nine hundred and sixty-one), known as the Weeks law, upon such terms and for specified periods or otherwise, as he may deem to be for the best interests of the United States; and all moneys received on account of charges, if any, made under this Act shall be disposed of as is provided by existing law for the disposition of receipts from national forests. [39 Stat. L. 1150.]

See the note to the preceding paragraph of the text.

For the Act of March 1, 1911, ch. 186, mentioned in this paragraph, see 1912 Supp. Fed. Stat. Ann. 390; 9 Fed. Stat. Ann. (2d ed.) 597.

Provisions identical with those of this paragraph were made by the Agricultural Appropriation Act of Aug. 11, 1916, ch. 313, § 1, 39 Stat. L. 462.

[SEC. 1.] [North Carolina Forest Reserve — acceptance of lands, etc.]

* * * Hereafter the Secretary of the Interior is authorized to accept for park purposes any lands and rights of way, including the Grandfather Mountain, near or adjacent to the Government forest reserve in western North Carolina. [— Stat. L. —.]

This is from the Sundry Civil Appropriation Act of June 12, 1917, ch. —.

TIME

Act of March 19, 1918, ch. —, 842.

Sec. 1. Saving Daylight — New Standard Time — Zones, 842.

2. Duty to Observe New Time, 843.

3. Period for Observing New Time, 843.

4. Time of Each Zone — How Designated, 843.

5. Repeals, 843.

An Act To save daylight and to provide standard time for the United States.

[Act of March 19, 1918, ch. —, — Stat. L. —.]

[SEC. 1.] [Saving daylight — new standard time — zones.] That, for the purpose of establishing the standard time of the United States, the

territory of continental United States shall be divided into five zones in the manner hereinafter provided. The standard time of the first zone shall be based on the mean astronomical time of the seventy-fifth degree of longitude west from Greenwich; that of the second zone on the ninetieth degree; that of the third zone on the one hundred and fifth degree; that of the fourth zone on the one hundred and twentieth degree; and that of the fifth zone, which shall include only Alaska, on the one hundred and fiftieth degree. That the limits of each zone shall be defined by an order of the Interstate Commerce Commission, having regard for the convenience of commerce and the existing junction points and division points of common carriers engaged in commerce between the several States and with foreign nations, and such order may be modified from time to time. [— *Stat. L. —*.]

SEC. 2. [Duty to observe new time.] That within the respective zones created under the authority hereof the standard time of the zone shall govern the movement of all common carriers engaged in commerce between the several States or between a State and any of the Territories of the United States, or between a State or the Territory of Alaska and any of the insular possessions of the United States or any foreign country. In all statutes, orders, rules, and regulations relating to the time of performance of any act by any officer or department of the United States, whether in the legislative, executive, or judicial branches of the Government, or relating to the time within which any rights shall accrue or determine, or within which any act shall or shall not be performed by any person subject to the jurisdiction of the United States, it shall be understood and intended that the time shall be the United States standard time of the zone within which the act is to be performed. [— *Stat. L. —*.]

SEC. 3. [Period for observing new time.] That at two o'clock antemeridian of the last Sunday in March of each year the standard time of each zone shall be advanced one hour, and at two o'clock antemeridian of the last Sunday in October in each year the standard time of each zone shall, by the retarding of one hour, be returned to the mean astronomical time of the degree of longitude governing said zone, so that between the last Sunday in March at two o'clock antemeridian and the last Sunday in October at two o'clock antemeridian in each year the standard time in each zone shall be one hour in advance of the mean astronomical time of the degree of longitude governing each zone, respectively. [— *Stat. L. —*.]

SEC. 4. [Time of each zone — how designated.] That the standard time of the first zone shall be known and designated as United States Standard Eastern Time; that of the second zone shall be known and designated as United States Standard Central Time; that of the third zone shall be known and designated as United States Standard Mountain Time; that of the fourth zone shall be known and designated as United States Standard Pacific Time; and that of the fifth zone shall be known and designated as United States Standard Alaska Time. [— *Stat. L. —*.]

SEC. 5. [Repeals.] That all Acts and parts of Acts in conflict herewith are hereby repealed. [— *Stat. L. —*.]

TONNAGE DUTIES

See PHILIPPINE ISLANDS

TRADE COMBINATIONS AND TRUSTS

Act of May 15, 1916, ch. 120, 844.

Interlocking Directors, etc., of Banks — Clayton Act of Oct. 15, 1914, ch. 323, sec. 8 Amended, 845.

Res. of Jan. 12, 1918, No. —, 845.

Clayton Anti-Trust Act of Oct. 15, 1914, ch. 323, sec. 10 — Time of Taking Effect, 845.

CROSS-REFERENCE

See NATIONAL BANKS

An Act To amend section eight of an Act entitled "An Act to supplement existing laws, against unlawful restraints and monopolies, and for other purposes," approved October fifteenth, nineteen hundred and fourteen.

[*Act of May 15, 1916, ch. 120, 39 Stat. L. 121.*]

[*Interlocking directors, etc., of banks — Clayton Act of Oct. 15, 1914, ch. 323, sec. 8 amended.*] That section eight of an Act entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October fifteenth, nineteen hundred and fourteen, be, and the same is hereby, amended by striking out the period at the end of the second clause of said section, inserting in lieu thereof a colon, and adding to said clause the following:

"*And provided further,* That nothing in this Act shall prohibit any officer, director, or employee of any member bank or class A director of a Federal reserve bank, who shall first procure the consent of the Federal Reserve Board, which board is hereby authorized, at its discretion, to grant, withhold, or revoke such consent, from being an officer, director, or employee of not more than two other banks, banking associations, or trust companies, whether organized under the laws of the United States or any State, if such other bank, banking association, or trust company is not in substantial competition with such member bank.

"The consent of the Federal Reserve Board may be procured before the person applying therefor has been elected as a class A director of a Federal reserve bank or as a director of any member bank." [39 Stat. L. 121.]

For the Act of Oct. 15, 1914, ch. 323, § 8, amended by this Act, see 1916 Supp. Fed. Stat. Ann. 273; 9 Fed. Stat. Ann. (2d ed.) 739.

Joint Resolution Extending until January first, nineteen hundred and nineteen, the effective date of section ten of the Act entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October fifteenth, nineteen hundred and fourteen.

[*Res. of Jan. 12, 1918, — Stat. L. —.*]

[**Clayton Anti-Trust Act of Oct. 15, 1914, ch. 323, sec. 10 — time of taking effect.**] That the effective date on and after which the provisions of section ten of the Act entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October fifteenth, nineteen hundred and fourteen, shall become and be effective is hereby deferred and extended to January first, nineteen hundred and nineteen: *Provided*, That said section shall become effective on January eighth, nineteen hundred and eighteen, as to any corporations hereafter organized. [*— Stat. L. —.*]

For the Act of Oct. 15, 1914, ch. 323, § 10, mentioned in the text, see 1916 Supp. Fed. Stat. Ann. 272, 9 Fed. Stat. Ann. (2d ed.) 741.

The time of taking effect of the section mentioned in the text had previously been extended to April 15, 1917, by a Res. of Aug. 31, 1916, ch. 427, 39 Stat. L. 674, and again extended to Jan. 8, 1918, by a Res. of March 4, 1917, ch. 190, 39 Stat. L. 1201.

TRADEMARKS

Act of Aug. 17, 1916, ch. 350, 845.

Sec. 1. Filing Applications — Extension of Time, 845.

2. Persons Entitled to Privilege, 845.

3. Time of Taking Effect, 845.

CROSS-REFERENCE

See *TRADING WITH THE ENEMY*

An Act To extend temporarily the time for filing applications and fees and taking action in the United States Patent Office in favor of nations granting reciprocal rights to United States citizens.

[*Act of Aug. 17, 1916, ch. 350, 39 Stat. L. 516.*]

[**SEC. 1.**] [**Filing applications — extension of time.**] That any applicant for letters patent or for the registration of any trade-mark, print, or label, being within the provisions of this Act, if unable on account of the existing and continuing state of war to file any application or pay any official fee or take any required action within the period now limited by law, shall be granted an extension of nine months beyond the expiration of said period. [*39 Stat. L. 516.*]

Since this Act affects applications for patents as well as trademarks, it is also given under **PATENTS**, *ante*, p. 575.

SEC. 2. [Persons entitled to privilege.] That the provisions of this Act shall be limited to citizens or subjects of countries which extend substantially similar privileges to the citizens of the United States, and no extension shall be granted under this Act to the citizens or subjects of any country while said country is at war with the United States. [39 Stat. L. 516.]

SEC. 3. [Time of taking effect.] That this Act shall be operative to relieve from default under existing law occurring since August first, nineteen hundred and fourteen, and before the first day of January, nineteen hundred and eighteen, and all applications and letters patent and registrations in the filing or prosecution whereof default has occurred for which this Act grants relief shall have the same force and effect as if said default had not occurred. [39 Stat. L. 516.]

TRADING WITH THE ENEMY

Act of Oct. 6, 1917, ch. 106, 847.

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Act of July 1, 1918, ch. —, 867.

Sec. 1, *Taxes Assessed against Money or other Property Held by Alien Property Custodian — Payment*, 867.

An Act To define, regulate, and punish trading with the enemy, and for other purposes.

[Act of Oct. 6, 1917, ch. 106, 40 Stat. L. 411.]

[SEC. 1.] [Title of Act.] That this Act shall be known as the "Trading with the enemy Act." [40 Stat. L. 411.]

SEC. 2. [Definitions — "enemy."] That the word "enemy," as used herein, shall be deemed to mean, for the purposes of such trading and of this Act —

(a) Any individual, partnership, or other body of individuals, of any nationality, resident within the territory (including that occupied by the military and naval forces) of any nation with which the United States is at war, or resident outside the United States and doing business within such territory, and any corporation incorporated within such territory of any nation with which the United States is at war or incorporated within any country other than the United States and doing business within such territory.

(b) The government of any nation with which the United States is at war, or any political or municipal subdivision thereof, or any officer, official, agent, or agency thereof.

(c) Such other individuals, or body or class of individuals, as may be natives, citizens, or subjects of any nation with which the United States is at war, other than citizens of the United States, wherever resident or wherever doing business, as the President, if he shall find the safety of the United States or the successful prosecution of the war shall so require, may, by proclamation, include within the term "enemy."

["Ally of enemy."] The words "ally of enemy," as used herein, shall be deemed to mean —

(a) Any individual, partnership, or other body of individuals, of any nationality, resident within the territory (including that occupied by the military and naval forces) of any nation which is an ally of a nation with which the United States is at war, or resident outside the United States and doing business within such territory, and any corporation incorporated within such territory of such ally nation, or incorporated within any country other than the United States and doing business within such territory.

(b) The government of any nation which is an ally of a nation with which the United States is at war, or any political or municipal subdivision of such ally nation, or any officer, official, agent, or agency thereof.

(c) Such other individuals, or body or class of individuals, as may be natives, citizens, or subjects of any nation which is an ally of a nation with which the United States is at war, other than citizens of the United States, wherever resident or wherever doing business, as the President, if he shall find the safety of the United States or the successful prosecution of the war shall so require, may, by proclamation, include within the term "ally of enemy."

["Person."] The word "person," as used herein, shall be deemed to mean an individual, partnership, association, company, or other unincorporated body of individuals, or corporation or body politic.

["United States."] The word "United States," as used herein, shall be deemed to mean all land and water, continental or insular, in any way within the jurisdiction of the United States or occupied by the military or naval forces thereof.

["The beginning of the war."] The words "the beginning of the war," as used herein, shall be deemed to mean midnight ending the day on which Congress has declared or shall declare war or the existence of a state of war.

["End of the war."] The words "end of the war," as used herein, shall be deemed to mean the date of proclamation of exchange of ratifica-

tions of the treaty of peace, unless the President shall, by proclamation, declare a prior date, in which case the date so proclaimed shall be deemed to be the "end of the war" within the meaning of this Act.

["**Bank or banks.**"] The words "bank or banks," as used herein, shall be deemed to mean and include national banks, State banks, trust companies, or other banks or banking associations doing business under the laws of the United States, or of any State of the United States.

["**To trade.**"] The words "to trade," as used herein, shall be deemed to mean —

(a) Pay, satisfy, compromise, or give security for the payment or satisfaction of any debt or obligation.

(b) Draw, accept, pay, present for acceptance or payment, or indorse any negotiable instrument or chose in action.

(c) Enter into, carry on, complete, or perform any contract, agreement, or obligation.

(d) Buy or sell, loan or extend credit, trade in, deal with, exchange, transmit, transfer, assign, or otherwise dispose of, or receive any form of property.

(e) To have any form of business or commercial communication or intercourse with. [40 Stat. L. 411.]

SEC. 3. That it shall be unlawful —

(a) [**Trading or attempting to trade — license.**] For any person in the United States, except with the license of the President, granted to such person, or to the enemy, or ally of enemy, as provided in this Act, to trade, or attempt to trade, either directly or indirectly, with, to, or from, or for, or on account of, or on behalf of, or for the benefit of, any other person, with knowledge or reasonable cause to believe that such other person is an enemy or ally of enemy, or is conducting or taking part in such trade, directly or indirectly, for, or on account of, or on behalf of, or for the benefit of, an enemy or ally of enemy.

(b) [**Transportation of subjects or citizens of enemy or ally of enemy nation.**] For any person, except with the license of the President, to transport or attempt to transport into or from the United States, or for any owner, master, or other person in charge of a vessel of American registry to transport or attempt to transport from any place to any other place, any subject or citizen of an enemy or ally of enemy nation, with knowledge or reasonable cause to believe that the person transported or attempted to be transported is such subject or citizen.

(c) [**Mail matter or other communication, etc.— bringing into or sending out of United States — exceptions.**] For any person (other than a person in the service of the United States Government or of the Government of any nation, except that of an enemy or ally of enemy nation, and other than such persons or classes of persons as may be exempted hereunder by the President or by such person as he may direct), to send, or take out of, or bring into, or attempt to send, or take out of, or bring into the United States, any letter or other writing or tangible form of communication, except in the regular course of the mail; and it shall be unlawful for any person to send, take, or transmit, or attempt to send, take, or transmit out of the United States, any letter or other writing, book, map, plan, or other

paper, picture, or any telegram, cablegram, or wireless message, or other form of communication intended for or to be delivered, directly or indirectly, to an enemy or ally of enemy: *Provided, however,* That any person may send, take, or transmit out of the United States anything herein forbidden if he shall first submit the same to the President, or to such officer as the President may direct, and shall obtain the license or consent of the President, under such rules and regulations, and with such exemptions, as shall be prescribed by the President.

"To an enemy or ally of an enemy" does not apply to the first paragraph ending at the semicolon, but only to the second paragraph. The first paragraph was intended to apply to any tangible communication, whether innocent or not, and whether intended for or delivered to a friendly or innocent person. *U. S. v. Welsh*, (S. D. N. Y. 1918) 309.

"Written or tangible form of communication" does not include a 6 per cent. coupon gold note of a private corporation unless there is extraneous matter on it. *U. S. v. Van Werkhoven*, (S. D. N. Y. 1918) 250 Fed. 311.

(d) **[Censorship of communications.]** Whenever, during the present war, the President shall deem that the public safety demands it, he may cause to be censored under such rules and regulations as he may from time to time establish, communications by mail, cable, radio, or other means of transmission passing between the United States and any foreign country he may from time to time specify, or which may be carried by any vessel or other means of transportation touching at any port, place, or territory of the United States and bound to or from any foreign country. Any person who willfully evades or attempts to evade the submission of any such communication to such censorship or willfully uses or attempts to use any code or other device for the purpose of concealing from such censorship the intended meaning of such communication shall be punished as provided in section sixteen of this Act. [40 Stat. L. 412.]

SEC. 4. (a) **[Insurance, reinsurance or other business company — license — transmission of funds out of United States — existing contracts.]** Every enemy or ally of enemy insurance or reinsurance company, and every enemy or ally of enemy, doing business within the United States through an agency or branch office, or otherwise, may, within thirty days after the passage of this Act, apply to the President for a license to continue to do business; and, within thirty days after such application, the President may enter an order either granting or refusing to grant such license. The license, if granted, may be temporary or otherwise, and for such period of time, and may contain such provisions and conditions regulating the business, agencies, managers and trustees and the control and disposition of the funds of the company, or of such enemy or ally of enemy, as the President shall deem necessary for the safety of the United States; and any license granted hereunder may be revoked or regranted or renewed in such manner and at such times as the President shall determine: *Provided, however,* That reasonable notice of his intent to refuse to grant a license or to revoke a license granted to any reinsurance company shall be given by him to all insurance companies incorporated within the United States and known to the President to be doing business with such reinsurance company. *Provided further,* That no insurance-

company, organized within the United States, shall be obligated to continue any existing contract, entered into prior to the beginning of the war, with any enemy or ally of enemy insurance or reinsurance company, but any such company may abrogate and cancel any such contract by serving thirty days' notice in writing upon the President of its election to abrogate such contract.

For a period of thirty days after the passage of this Act, and further pending the entry of such order by the President, after application made by any enemy or ally of enemy insurance or reinsurance company, within such thirty days as above provided, the provisions of the President's proclamation of April sixth, nineteen hundred and seventeen, relative to agencies in the United States of certain insurance companies, as modified by the provisions of the President's proclamation of July thirteenth, nineteen hundred and seventeen, relative to marine and war-risk insurance, shall remain in full force and effect so far as it applies to such German insurance companies, and the conditions of said proclamation of April sixth, nineteen hundred and seventeen, as modified by said proclamation of July thirteenth, nineteen hundred and seventeen, shall also during said period of thirty days after the passage of this Act, and pending the order of the President as herein provided, apply to any enemy or ally of enemy insurance or reinsurance company, anything in this Act to the contrary notwithstanding. It shall be unlawful for any enemy or ally of enemy insurance or reinsurance company, to whom license is granted, to transmit out of the United States any funds belonging to or held for the benefit of such company or to use any such funds as the basis for the establishment directly or indirectly of any credit within or outside of the United States to, or for the benefit of, or on behalf of, or on account of, an enemy or ally of enemy.

For a period of thirty days after the passage of this Act, and further pending the entry of such order by the President, after application made within such thirty days by any enemy or ally of enemy, other than an insurance or reinsurance company as above provided, it shall be lawful for such enemy or ally of enemy to continue to do business in this country and for any person to trade with, to, from, for, on account of, on behalf of or for the benefit of such enemy or ally of enemy, anything in this Act to the contrary notwithstanding: *Provided, however,* That the provisions of sections three and sixteen hereof shall apply to any act or attempted act of transmission or transfer of money or other property out of the United States and to the use or attempted use of such money or property as the basis for the establishment of any credit within or outside of the United States to, or for the benefit of, or on behalf of, or on account of, an enemy or ally of enemy.

If no license is applied for within thirty days after the passage of this Act, or if a license shall be refused to any enemy or ally of enemy, whether insurance or reinsurance company or other person, making application, or if any license granted shall be revoked by the President, the provisions of sections three and sixteen hereof shall forthwith apply to all trade or to any attempt to trade with, to, from, for, by, on account of, or on behalf of, or for the benefit of such company or other person: *Provided, however,* That after such refusal or revocation, anything in this Act to the contrary

notwithstanding, it shall be lawful for a policyholder or for an insurance company, not an enemy or ally of enemy, holding insurance or having effected reinsurance in or with such enemy or ally of enemy insurance or reinsurance company, to receive payment of, and for such enemy or ally of enemy insurance or reinsurance company to pay any premium, return premium, claim, money, security, or other property due or which may become due on or in respect to such insurance or reinsurance in force at the date of such refusal or revocation of license; and nothing in this Act shall vitiate or nullify then existing policies or contracts of insurance or reinsurance, or the conditions thereof; and any such policyholder or insurance company, not an enemy or ally of enemy, having any claim to or upon money or other property of the enemy or ally of enemy insurance or reinsurance company in the custody or control of the alien property custodian, hereinafter provided for, or of the Treasurer of the United States, may make application for the payment thereof and may institute suit as provided in section nine hereof.

(b) **[Change of name of company, etc.—license to do business.]** That, during the present war, no enemy, or ally of enemy, and no partnership of which he is a member or was a member at the beginning of the war, shall for any purpose assume or use any name other than that by which such enemy or partnership was ordinarily known at the beginning of the war, except under license from the President.

Whenever, during the present war, in the opinion of the President the public safety or public interest requires, the President may prohibit any or all foreign insurance companies from doing business in the United States, or the President may license such company or companies to do business upon such terms as he may deem proper. [40 Stat. L. 413.]

SEC. 5. (a) [Suspension of Act — granting, revoking, etc., of licenses.] That the President, if he shall find it compatible with the safety of the United States and with the successful prosecution of the war, may, by proclamation, suspend the provisions of this Act so far as they apply to an ally of enemy, and he may revoke or renew such suspension from time to time; and the President may grant licenses, special or general, temporary or otherwise, and for such period of time and containing such provisions and conditions as he shall prescribe, to any person or class of persons to do business as provided in subsection (a) of section four hereof, and to perform any act made unlawful without such license in section three hereof, and to file and prosecute applications under subsection (b) of section ten hereof; and he may revoke or renew such licenses from time to time, if he shall be of opinion that such grant or revocation or renewal shall be compatible with the safety of the United States and with the successful prosecution of the war; and he may make such rules and regulations, not inconsistent with law, as may be necessary and proper to carry out the provisions of this Act; and the President may exercise any power or authority conferred by this Act through such officer or officers as he shall direct.

If the President shall have reasonable cause to believe that any act is about to be performed in violation of section three hereof he shall have authority to order the postponement of the performance of such act for

a period not exceeding ninety days, pending investigation of the facts by him.

(b) [Investigation, regulation or prohibition of transactions in foreign exchange, coin, bullion, credit, evidences of indebtedness, etc.] That the President may investigate, regulate, or prohibit, under such rules and regulations as he may prescribe, by means of licenses or otherwise, any transaction in foreign exchange, export or earmarkings of gold or silver coin or bullion or currency, transfers of credit in any form (other than credits relating solely to transactions to be executed wholly within the United States), and transfers of evidences of indebtedness or of the ownership of property between the United States and any foreign country, whether enemy, ally of enemy or otherwise, or between residents of one or more foreign countries, by any person within the United States; and he may require any such person engaged in any such transaction to furnish, under oath, complete information relative thereto, including the production of any books of account, contracts, letters or other papers, in connection therewith in the custody or control of such person, either before or after such transaction is completed [40 Stat. L. 415.]

SEC. 6. [Alien property custodian — appointment — salary — powers — bond — employees — report.] That the President is authorized to appoint, prescribe the duties of, and fix the salary (not to exceed \$5,000 per annum), of an official to be known as the alien property custodian, who shall be empowered to receive all money and property in the United States due or belonging to an enemy, or ally of enemy, which may be paid, conveyed, transferred, assigned, or delivered to said custodian under the provisions of this Act; and to hold, administer, and account for the same under the general direction of the President and as provided in this Act. The alien property custodian shall give such bond or bonds, and in such form and amount, and with such security as the President shall prescribe. The President may further employ in the District of Columbia and elsewhere and fix the compensation of such clerks, attorneys, investigators, accountants, and other employees as he may find necessary for the due administration of the provisions of this Act: *Provided*, That such clerks, investigators, accountants, and other employees shall be appointed from lists of eligibles to be supplied by the Civil Service Commission and in accordance with the civil service law: *Provided further*, That the President shall cause a detailed report to be made to Congress on the first day of January of each year of all proceedings had under this Act during the year preceding. Such report shall contain a list of all persons appointed or employed, with the salary or compensation paid to each, and a statement of the different kinds of property taken into custody and the disposition made thereof. [40 Stat. L. 415.]

SEC. 7. (a) [Lists of officers, directors, stockholders, etc., of corporations — reports of indebtedness to enemy, etc.] That every corporation incorporated within the United States, and every unincorporated association, or company, or trustee, or trustees within the United States, issuing shares or certificates representing beneficial interests, shall, under such rules and regulations as the President may prescribe and, within sixty

days after the passage of this Act, and at such other times thereafter as the President may require, transmit to the alien property custodian a full list, duly sworn to, of every officer, director, or stockholder known to be, or whom the representative of such corporation, association, company, or trustee has reasonable cause to believe to be an enemy or ally of enemy resident within the territory, or a subject or citizen residing outside of the United States, of any nation with which the United States is at war, or resident within the territory, or a subject or citizen residing outside of the United States, of any ally of any nation with which the United States is at war, together with the amount of stock or shares owned by each such officer, director, or stockholder, or in which he has any interest.

The President may also require a similar list to be transmitted of all stock or shares owned on February third, nineteen hundred and seventeen, by any person now defined as an enemy or ally of enemy, or in which any such person had any interest; and he may also require a list to be transmitted of all cases in which said corporation, association, company, or trustee has reasonable cause to believe that the stock or shares on February third, nineteen hundred and seventeen, were owned or are owned by such enemy or ally of enemy, though standing on the books in the name of another: *Provided, however,* That the name of any such officer, director, or stockholder shall be stricken permanently or temporarily from such list by the alien property custodian when he shall be satisfied that he is not such enemy or ally of enemy.

Any person in the United States who holds or has or shall hold or have custody or control of any property beneficial or otherwise, alone or jointly with others, of, for, or on behalf of an enemy or ally of enemy, or of any person whom he may have reasonable cause to believe to be an enemy or ally of enemy and any person in the United States who is or shall be indebted in any way to an enemy or ally of enemy, or to any person whom he may have reasonable cause to believe to be an enemy or ally of enemy, shall, with such exceptions and under such rules and regulations as the President shall prescribe, and within thirty days after the passage of this Act, or within thirty days after such property shall come within his custody or control, or after such debt shall become due, report the fact to the alien-property custodian by written statement under oath containing such particulars as said custodian shall require. The President may also require a similar report of all property so held, of, for, or on behalf of, and of all debts so owed to, any person now defined as an enemy or ally of enemy, on February third, nineteen hundred and seventeen: *Provided,* That the name of any person shall be stricken from the said report by the alien-property custodian, either temporarily or permanently, when he shall be satisfied that such person is not an enemy or ally of enemy. The President may extend the time for filing the lists or reports required by this section for an additional period not exceeding ninety days.

(b) [Prior illegal acts — transfer, etc., of money — completion of contracts — payments for benefit of enemies, etc.—suits by or against enemies, etc.] Nothing in this Act contained shall render valid or legal, or be construed to recognize as valid or legal, any act or transaction constituting trade with, to, from, for or on account of, or on behalf or for the benefit of an enemy performed or engaged in since the beginning of the

war and prior to the passage of this Act, or any such act or transaction hereafter performed or engaged in except as authorized hereunder, which would otherwise have been or be void, illegal, or invalid at law. No conveyance, transfer, delivery, payment, or loan of money or other property, in violation of section three hereof, made after the passage of this Act, and not under license as herein provided shall confer or create any right or remedy in respect thereof; and no person shall by virtue of any assignment, indorsement, or delivery to him of any debt, bill, note, or other obligation or chose in action by, from, or on behalf of, or on account of, or for the benefit of an enemy or ally of enemy have any right or remedy against the debtor, obligor, or other person liable to pay, fulfill, or perform the same unless said assignment, indorsement, or delivery was made prior to the beginning of the war or shall be made under license as herein provided, or unless, if made after the beginning of the war and prior to the date of passage of this Act, the person to whom the same was made shall prove lack of knowledge and of reasonable cause to believe on his part that the same was made by, from or on behalf of, or on account of, or for the benefit of an enemy or ally of enemy; and any person who knowingly pays, discharges, or satisfies any such debt, note, bill, or other obligation or chose in action, shall, on conviction thereof, be deemed to violate section three hereof: *Provided*, That nothing in this Act contained shall prevent the carrying out, completion, or performance of any contract, agreement, or obligation originally made with or entered into by an enemy or ally of enemy where, prior to the beginning of the war and not in contemplation thereof, the interest of such enemy or ally of enemy devolved by assignment or otherwise upon a person not an enemy or ally of enemy, and no enemy or ally of enemy will be benefited by such carrying out, completion, or performance otherwise than by release from obligation thereunder.

Nothing in this Act shall be deemed to prevent payment of money belonging or owing to an enemy or ally of enemy to a person within the United States not an enemy or ally of enemy, for the benefit of such person or of any other person within the United States, not an enemy or ally of enemy, if the funds so paid shall have been received prior to the beginning of the war and such payments arise out of transactions entered into prior to the beginning of the war, and not in contemplation thereof: *Provided*, That such payment shall not be made without the license of the President, general or special, as provided in this Act.

Nothing in this Act shall be deemed to authorize the prosecution of any suit or action at law or in equity in any court within the United States by an enemy or ally of enemy prior to the end of the war, except as provided in section ten hereof: *Provided, however*, That an enemy or ally of enemy licensed to do business under this Act may prosecute and maintain any such suit or action so far as the same arises solely out of the business transacted within the United States under such license and so long as such license remains in full force and effect: *And provided further*, That an enemy or ally of enemy may defend by counsel any suit in equity or action at law which may be brought against him.

Receipt of notice from the President to the effect that he has reasonable ground to believe that any person is an enemy or ally of enemy shall be prima facie defense to any one receiving the same, in any suit or action at

law or in equity brought or maintained, or to any right to set-off or recoupment asserted by, such person and based on failure to complete or perform since the beginning of the war any contract or other obligation. In any prosecution under section sixteen hereof, proof of receipt of notice from the President to the effect that he has reasonable cause to believe that any person is an enemy or ally of enemy shall be prima facie evidence that the person receiving such notice has reasonable cause to believe such other person to be an enemy or ally of enemy within the meaning of section three hereof.

(c) **[Delivery of property, etc., to alien property custodian.]** If the President shall so require, any money or other property owing or belonging to or held for, by, on account of, or on behalf of, or for the benefit of an enemy or ally of enemy not holding a license granted by the President hereunder, which the President after investigation shall determine is so owing or so belongs or is so held, shall be conveyed, transferred, assigned, delivered, or paid over to the alien property custodian.

(d) **[Transfer of money, property, etc., to alien property custodian.]** If not required to pay, convey, transfer, assign, or deliver under the provisions of subsection (c) hereof, any person not an enemy or ally of enemy who owes to, or holds for, or on account of, or on behalf of, or for the benefit of an enemy or of an ally of enemy not holding a license granted by the President hereunder, any money or other property, or to whom any obligation or form of liability to such enemy or ally of enemy is presented for payment, may, at his option, with the consent of the President, pay, convey, transfer, assign, or deliver to the alien property custodian said money or other property under such rules and regulations as the President shall prescribe.

(e) **[Liability for acts done under Presidential regulation — effect of transfer of property, etc., to alien property custodian — certificate of authority of custodian, etc.]** No person shall be held liable in any court for or in respect to anything done or omitted in pursuance of any order, rule, or regulation made by the President under the authority of this Act.

Any payment, conveyance, transfer, assignment, or delivery of money or property made to the alien property custodian hereunder shall be a full acquittance and discharge for all purposes of the obligation of the person making the same to the extent of same. The alien property custodian and such other persons as the President may appoint shall have power to execute, acknowledge, and deliver any such instrument or instruments as may be necessary or proper to evidence upon the record or otherwise such acquittance and discharge, and shall, in case of payment to the alien property custodian of any debt or obligation owed to an enemy or ally of enemy, deliver up any notes, bonds, or other evidences of indebtedness or obligation, or any security therefor in which such enemy or ally of enemy had any right or interest that may have come into the possession of the alien property custodian, with like effect as if he or they, respectively, were duly appointed by the enemy or ally of enemy, creditor, or obligee. The President shall issue to every person so appointed a certificate of the appointment and authority of such person, and such certificate shall be received in evidence in all courts within the United States. Whenever any such certificate of authority shall be offered to any registrar, clerk, or other

recording officer, Federal or otherwise, within the United States, such officer shall record the same in like manner as a power of attorney, and such record or a duly certified copy thereof shall be received in evidence in all courts of the United States or other courts within the United States. [40 Stat. L. 416.]

SEC. 8. (a) [Mortgage, pledge, lien, contract, etc.—termination—disposition of surplus.] That any person not an enemy or ally of enemy holding a lawful mortgage, pledge, or lien, or other right in the nature of security in property of an enemy or ally of enemy which, by law or by the terms of the instrument creating such mortgage, pledge, or lien, or right, may be disposed of on notice or presentation or demand, and any person not an enemy or ally of enemy who is a party to any lawful contract with an enemy or ally of enemy, the terms of which provide for a termination thereof upon notice or for acceleration of maturity on presentation or demand, may continue to hold said property, and, after default, may dispose of the property in accordance with law or may terminate or mature such contract by notice or presentation or demand served or made on the alien property custodian in accordance with the law and the terms of such instrument or contract and under such rules and regulations as the President shall prescribe; and such notice and such presentation and demand shall have, in all respects, the same force and effect as if duly served or made upon the enemy or ally of enemy personally: *Provided*, That no such rule or regulation shall require that notice or presentation or demand shall be served or made in any case in which, by law or by the terms of said instrument or contract, no notice, presentation, or demand was, prior to the passage of this Act, required; and that in case where, by law or by the terms of such instrument or contract, notice is required, no longer period of notice shall be required: *Provided further*, That if, on any such disposition of property, a surplus shall remain after the satisfaction of the mortgage, pledge, lien, or other right in the nature of security, notice of that fact shall be given to the President pursuant to such rules and regulations as he may prescribe, and such surplus shall be held subject to his further order.

(b) [Abrogation of contracts.] That any contract entered into prior to the beginning of the war between any citizen of the United States or any corporation organized within the United States, and an enemy or ally of any enemy, the terms of which provide for the delivery, during or after any war in which a present enemy or ally of enemy nation has been or is now engaged, of anything produced, mined, or manufactured in the United States, may be abrogated by such citizen or corporation by serving thirty days' notice in writing upon the alien property custodian of his or its election to abrogate such contract.

(c) [Suspension of statute of limitations.] The running of any statute of limitations shall be suspended with reference to the rights or remedies on any contract or obligation entered into prior to the beginning of the war between parties neither of whom is an enemy or ally of enemy, and containing any promise to pay or liability for payment which is evidenced by drafts or other commercial paper drawn against or secured by funds or other property situated in an enemy or ally of enemy country, and no suit

shall be maintained on any such contract or obligation in any court within the United States until after the end of the war, or until the said funds or property shall be released for the payment or satisfaction of such contract or obligation: *Provided, however,* That nothing herein contained shall be construed to prevent the suspension of the running of the statute of limitations in all other cases where such suspension would occur under existing law. [40 Stat. L. 418.]

SEC. 9. [Claims of enemy, etc., for property — suits against claimant — liability of property for lien, attachment, etc.] That any person, not an enemy, or ally of enemy, claiming any interest, right, or title in any money or other property which may have been conveyed, transferred, assigned, delivered, or paid to the alien property custodian hereunder, and held by him or by the Treasurer of the United States, or to whom any debt may be owing from an enemy, or ally of enemy, whose property or any part thereof shall have been conveyed, transferred, assigned, delivered, or paid to the alien property custodian hereunder, and held by him or by the Treasurer of the United States, may file with the said custodian a notice of his claim under oath and in such form and containing such particulars as the said custodian shall require; and the President, if application is made therefor by the claimant, may, with the assent of the owner of said property and of all persons claiming any right, title, or interest therein, order the payment, conveyance, transfer, assignment or delivery to said claimant of the money or other property so held by the alien property custodian or by the Treasurer of the United States or of the interest therein to which the President shall determine said claimant is entitled: *Provided,* That no such order by the President shall bar any person from the prosecution of any suit at law or in equity against the claimant to establish any right, title or interest which he may have in such money or other property. If the President shall not so order within sixty days after the filing of such application, or if the claimant shall have filed the notice as above required and shall have made no application to the President, said claimant may, at any time before the expiration of six months, after the end of the war, institute a suit in equity in the district court of the United States for the district in which such claimant resides, or, if a corporation, where it has its principal place of business (to which suit the alien property custodian or the Treasurer of the United States, as the case may be, shall be made a party defendant), to establish the interest, right, title, or debt so claimed, and if suit shall be so instituted then the money or other property of the enemy, or ally of enemy, against whom such interest, right, or title is asserted, or debt claimed, shall be retained in the custody of the alien property custodian, or in the Treasury of the United States, as provided in this Act, and until any final judgment or decree which shall be entered in favor of the claimant shall be fully satisfied by payment or conveyance, transfer, assignment, or delivery by the defendant or by the alien property custodian or Treasurer of the United States on order of the court, or until final judgment or decree shall be entered against the claimant, or suit otherwise terminated.

Except as herein provided, the money or other property conveyed, transferred, assigned, delivered, or paid to the alien property custodian shall

not be liable to lien, attachment, garnishment, trustee process, or execution, or subject to any order or decree of any court.

This section shall not apply, however, to money paid to the alien property custodian under section ten hereof. [40 Stat. L. 419.]

SEC. 10. That nothing contained in this Act shall be held to make unlawful any of the following Acts:

(a) **[Application for patent, trademark or copyright.]** An enemy, or ally of enemy, may file and prosecute in the United States an application for letters patent, or for registration of trade-mark, print, label, or copyright, and may pay any fees therefor in accordance with and as required by the provisions of existing law and fees for attorneys or agents for filing and prosecuting such applications. Any such enemy, or ally of enemy, who is unable during war, or within six months thereafter, on account of conditions arising out of war, to file any such application, or to pay any official fee, or to take any action required by law within the period prescribed by law, may be granted an extension of nine months beyond the expiration of said period, provided the nation of which the said applicant is a citizen, subject, or corporation shall extend substantially similar privileges to citizens and corporations of the United States.

(b) **[Payment of fees, etc., to enemy, etc., for patents or trademarks or copyrights.]** Any citizen of the United States, or any corporation organized within the United States, may, when duly authorized by the President, pay to an enemy or ally of enemy any tax, annuity, or fee which may be required by the laws of such enemy or ally of enemy nation in relation to patents and trademarks, prints, labels, and copyrights; and any such citizen or corporation may file and prosecute an application for letters patent or for registration of trademark, print, label, or copyright in the country of an enemy, or of an ally of enemy after first submitting such application to the President and receiving license so to file and prosecute, and to pay the fees required by law and customary agents' fees, the maximum amount of which in each case shall be subject to the control of the President.

(c) **[Use of enemy, etc., trademarks, copyrights, etc.—license.]** Any citizen of the United States or any corporation organized within the United States desiring to manufacture, or cause to be manufactured, a machine, manufacture, composition of matter, or design, or to carry on, or to use any trade-mark, print, label or cause to be carried on, a process under any patent or copyrighted matter owned or controlled by an enemy or ally of enemy at any time during the existence of a state of war may apply to the President for a licensee; and the President is hereby authorized to grant such a license, nonexclusive or exclusive as he shall deem best, provided he shall be of the opinion that such grant is for the public welfare, and that the applicant is able and intends in good faith to manufacture, or cause to be manufactured, the machine, manufacture, composition of matter, or design, or to carry on, or cause to be carried on, the process or to use the trade-mark, print, label or copyrighted matter. The President may prescribe the conditions of this license, including the fixing of prices of articles and products necessary to the health of the military and naval forces of the United States or the successful prosecution of the war, and the rules and regulations under which such license may be granted and the fee which

shall be charged therefor, not exceeding \$100, and not exceeding one per centum of the fund deposited as hereinafter provided. Such license shall be a complete defense to any suit at law or in equity instituted by the enemy or ally of enemy owners of the letters patent, trade-mark, print, label or copyright, or otherwise, against the licensee for infringement or for damages, royalty, or other money award on account of anything done by the licensee under such license, except as provided in subsection (f) hereof.

(d) **[Statement of use of enemy trademarks, copyrights, etc.—payment therefor.]** The licensee shall file with the President a full statement of the extent of the use and enjoyment of the license, and of the prices received in such form and at such stated periods (at least annually) as the President may prescribe; and the licensee shall pay at such times as may be required to the alien property custodian not to exceed five per centum of the gross sums received by the licensee from the sale of said inventions or use of the trademark, print, label, or copyrighted matter, or, if the President shall so order, five per centum of the value of the use of such inventions, trade-marks, prints, labels or copyrighted matter to the licensee as established by the President; and sums so paid shall be deposited by said alien property custodian forthwith in the Treasury of the United States as a trust fund for the said licensee and for the owner of the said patent, trade-mark, print, label or copyright registration as hereinafter provided, to be paid from the Treasury upon order of the court, as provided in subdivision (f) of this section, or upon the direction of the alien property custodian.

(e) **[Duration of license—termination.]** Unless surrendered or terminated as provided in this Act, any license granted hereunder shall continue during the term fixed in the license or in the absence of any such limitation during the term of the patent, trade-mark, print, label, or copyright registration under which it is granted. Upon violation by the licensee of any of the provisions of this Act, or of the conditions of the license, the President may, after due notice and hearing, cancel any license granted by him.

(f) **[Suits by enemy, etc., against licensee, etc., decree—injunction.]** The owner of any patent, trade-mark, print, label, or copyright under which a license is granted hereunder may, after the end of the war and until the expiration of one year thereafter, file a bill in equity against the licensee in the district court of the United States for the district in which the said licensee resides, or, if a corporation, in which it has its principal place of business (to which suit the Treasurer of the United States shall be made a party,) for recovery from the said licensee for all use and enjoyment of the said patented invention, trade-mark, print, label, or copyrighted matter: *Provided, however,* That whenever suit is brought, as above, notice shall be filed with the alien property custodian within thirty days after date of entry of suit: *Provided further,* That the licensee may make any and all defenses which would be available were no license granted. The court on due proceedings had may adjudge and decree to the said owner payment of a reasonable royalty. The amount of said judgment and decree, when final, shall be paid on order of the court to the owner of the patent from the fund deposited by the licensee, so far as such deposit will satisfy said judgment and decree; and the said payment shall be in full or partial

satisfaction of said judgment and decree, as the facts may appear; and if, after payment of all such judgments and decrees, there shall remain any balance of said deposit, such balance shall be repaid to the licensee on order of the alien property custodian. If no suit is brought within one year after the end of the war, or no notice is filed as above required, then the licensee shall not be liable to make any further deposits, and all funds deposited by him shall be repaid to him on order of the alien property custodian. Upon entry of suit and notice filed as above required, or upon repayment of funds as above provided, the liability of the licensee to make further reports to the President shall cease.

If suit is brought as above provided, the court may, at any time, terminate the license, and may, in such event, issue an injunction to restrain the licensee from infringement thereafter, or the court, in case the licensee, prior to suit, shall have made investment of capital based on possession of the license, may continue the license for such period and upon such terms and with such royalties as it shall find to be just and reasonable.

(g) **[Suits by enemy, etc., against infringers of patents, trademarks, etc.—decree—injunction.]** Any enemy, or ally of enemy, may institute and prosecute suits in equity against any person other than a licensee under this Act to enjoin infringement of letters patent, trade-mark, print, label, and copyrights in the United States owned or controlled by said enemy or ally of enemy, in the same manner and to the extent that he would be entitled so to do if the United States was not at war: *Provided*, That no final judgment or decree shall be entered in favor of such enemy or ally of enemy by any court except after thirty days' notice to the alien property custodian. Such notice shall be in writing and shall be served in the same manner as civil process of Federal courts.

(h) **[Powers of attorney.]** All powers of attorney heretofore or hereafter granted by an enemy or ally of enemy to any person within the United States, in so far as they may be requisite to the performance of acts authorized in subsections (a) and (g) of this section, shall be valid.

(i) **[Publication of inventions, etc.]** Whenever the publication of an invention by the granting of a patent may, in the opinion of the President, be detrimental to the public safety or defense, or may assist the enemy or endanger the successful prosecution of the war, he may order that the invention be kept secret and withhold the grant of a patent until the end of the war: *Provided*, That the invention disclosed in the application for said patent may be held abandoned upon it being established before or by the Commissioner of Patents that, in violation of said order, said invention has been published or that an application for a patent therefor has been filed in any other country, by the inventor or his assigns or legal representatives, without the consent or approval of the commissioner or under a license of the President.

When an applicant whose patent is withheld as herein provided and who faithfully obeys the order of the President above referred to shall tender his invention to the Government of the United States for its use, he shall, if he ultimately receives a patent, have the right to sue for compensation in the Court of Claims, such right to compensation to begin from the date of the use of the invention by the Government. [40 Stat. L. 420.]

SEC. 11. [Prohibition of imports.] Whenever during the present war the President shall find that the public safety so requires and shall make

proclamation thereof it shall be unlawful to import into the United States from any country named in such proclamation any article or articles mentioned in such proclamation except at such time or times, and under such regulations or orders, and subject to such limitations and exceptions as the President shall prescribe, until otherwise ordered by the President or by Congress: *Provided, however*, That no preference shall be given to the ports of the State over those of another. [40 Stat. L. 422.]

SEC. 12. [Disposition of money, property, etc., received by alien property custodian — duties and powers of custodian — claims of enemy, etc., for property.] That all moneys (including checks and drafts payable on demand) paid to or received by the alien property custodian pursuant to this Act shall be deposited forthwith in the Treasury of the United States, and may be invested and reinvested by the Secretary of the Treasury in United States bonds or United States certificates of indebtedness, under such rules and regulations as the President shall prescribe for such deposit, investment, and sale of securities; and as soon after the end of the war as the President shall deem practicable, such securities shall be sold and the proceeds deposited in the Treasury.

All other property of an enemy, or ally of enemy, conveyed, transferred, assigned, delivered, or paid to the alien property custodian hereunder shall be safely held and administered by him except as hereinafter provided; and the President is authorized to designate as a depository, or depositaries, of property of an enemy or ally of enemy, any bank, or banks, or trust company, or trust companies, or other suitable depository or depositaries, located and doing business in the United States. The alien property custodian may deposit with such designated depository or depositaries, or with the Secretary of the Treasury, any stocks, bonds, notes, time drafts, time bills of exchange, or other securities, or property, (except money or checks or drafts payable on demand which are required to be deposited with the Secretary of the Treasury) and such depository or depositaries shall be authorized and empowered to collect any dividends or interest or income that may become due and any maturing obligations held for the account of such custodian. Any moneys collected on said account shall be paid and deposited forthwith by said depository or by the alien property custodian into the Treasury of the United States as hereinbefore provided.

The President shall require all such designated depositaries to execute and file bonds sufficient in his judgment to protect property on deposit, such bonds to be conditioned as he may direct.

The alien property custodian shall be vested with all of the powers of a common-law trustee in respect of all property, other than money, which has been or shall be, or which has been or shall be required to be, conveyed, transferred, assigned, delivered, or paid over to him in pursuance of the provisions of this Act, and, in addition thereto, acting under the supervision and direction of the President, and under such rules and regulations as the President shall prescribe, shall have power to manage such property and do any act or things in respect thereof or make any disposition thereof or of any part thereof, by sale or otherwise, and exercise any rights or powers which may be or become appurtenant thereto or to the

ownership thereof in like manner as though he were the absolute owner thereof: *Provided*, That any property sold under this Act, except when sold to the United States, shall be sold only to American citizens, at public sale to the highest bidder, after public advertisement of time and place of sale which shall be where the property or a major portion thereof is situated, unless the President stating the reasons therefor, in the public interest shall otherwise determine: *Provided further*, That when sold at public sale, the alien property custodian upon the order of the President stating the reasons therefor, shall have the right to reject all bids and resell such property at public sale or otherwise as the President may direct. Any person purchasing property from the alien property custodian for an undisclosed principal, or for re-sale to a person not a citizen of the United States, or for the benefit of a person not a citizen of the United States, shall be guilty of a misdemeanor, and, upon conviction, shall be subject to a fine of not more than \$10,000, or imprisonment for not more than ten years, or both, and the property shall be forfeited to the United States. It shall be the duty of every corporation incorporated within the United States and every unincorporated association, or company, or trustee, or trustees within the United States issuing shares or certificates representing beneficial interests to transfer such shares or certificates upon its, his, or their books into the name of the alien property custodian upon demand, accompanied by the presentation of the certificates which represent such shares or beneficial interests. The alien property custodian shall forthwith deposit in the Treasury of the United States, as hereinbefore provided, the proceeds of any such property or rights so sold by him.

Any money or property required or authorized by the provisions of this Act to be paid, conveyed, transferred, assigned, or delivered to the alien property custodian shall, if said custodian shall so direct by written order, be paid, conveyed, transferred, assigned, or delivered to the Treasurer of the United States with the same effect as if to the alien property custodian.

After the end of the war any claim of any enemy or of an ally of enemy to any money or other property received and held by the alien property custodian or deposited in the United States Treasury, shall be settled as Congress shall direct: *Provided, however*, That on order of President as set forth in section nine hereof, or of the court, as set forth in sections nine and ten hereof, the alien property custodian or the Treasurer of the United States, as the case may be, shall forthwith convey, transfer, assign, and pay to the person to whom the President shall so order, or in whose behalf the court shall enter final judgment or decree, any property of an enemy or ally of enemy held by said custodian or by said Treasurer, so far as may be necessary to comply with said order of the President or said final judgment or decree of the court: *And provided further*, That the Treasurer of the United States, on order of the alien property custodian shall, as provided in section ten hereof, repay to the licensee any funds deposited by said licensee. [40 Stat. L. 423, as amended by — Stat. L. —.]

The fourth paragraph of this section was amended to read as given in the text by the Deficiency Appropriation Act of March 28, 1918, ch. —. As originally enacted it was as follows:

"The alien property custodian shall be vested with all of the powers of a common-law trustee in respect of all property, other than money, which shall come into his possession in pursuance of the provisions of this Act, and, acting under the supervision and direction of the President, and under such rules and regulations as the

President shall prescribe, may manage such property and do any act or things in respect thereof or make any disposition thereof or of any part thereof, by sale or otherwise, and exercise any rights which may be or become appurtenant thereto or to the ownership thereof, if and when necessary to prevent waste and protect such property and to the end that interests of the United States in such property and rights or of such person as may ultimately become entitled thereto, or to the proceeds thereof, may be preserved and safeguarded. It shall be the duty of every corporation incorporated within the United States and every unincorporated association, or company, or trustee, or trustees within the United States issuing shares or certificates representing beneficial interests to transfer such shares or certificates upon its, his, or their books into the name of the alien property custodian upon demand, accompanied by the presentation of the certificates which represent such shares or beneficial interests. The alien property custodian shall forthwith deposit in the Treasury of the United States, as hereinbefore provided, the proceeds of any such property or rights so sold by him."

SEC. 13. [Statements by masters, etc., of vessels.] That, during the present war, in addition to the facts required by sections forty-one hundred and ninety-seven, forty-one hundred and ninety-eight, and forty-two hundred of the Revised Statutes, as amended by the Act of June fifteenth, nineteen hundred and seventeen, to be set out in the master's and shipper's manifests before clearance will be issued to vessels bound to foreign ports, the master or person in charge of any vessel, before departure of such vessel from port, shall deliver to the collector of customs of the district wherein such vessel is located a statement duly verified by oath that the cargo is not shipped or to be delivered in violation of this Act, and the owners, shippers, or consignors of the cargo of such vessels shall in like manner deliver to the collector like statement under oath as to the cargo or the parts thereof laden or shipped by them, respectively, which statement shall contain also the names and addresses of the actual consignees of the cargo, or if the shipment is made to a bank or other broker, factor, or agent, the names and addresses of the persons who are the actual consignees on whose account the shipment is made. The master or person in control of the vessel shall, on reaching port of destination of any of the cargo, deliver a copy of the manifest and of the said master's, owner's, shipper's, or consignor's statement to the American consular officer of the district in which the cargo is unladen. [40 Stat. L. 424.]

For R. S. secs. 4197, 4198, 4200, mentioned in this section, see 7 Fed. Stat. Ann. pp. 45, 46; 9 Fed. Stat. Ann. (2d ed.) 296.

For the amending Act of June 15, 1917, ch. —, mentioned in this section, see *NEUTRALITY, ante*, p. 570.

SEC. 14. [Clearance of vessels — refusal — report of coin, bullion, etc., intended for export.] That, during the present war, whenever there is reasonable cause to believe that the manifest or the additional statements under oath required by the preceding section are false or that any vessel, domestic or foreign, is about to carry out of the United States any property to or for the account or benefit of an enemy, or ally of enemy, or any property or person whose export, taking out, or transport will be in violation of law, the collector of customs for the district in which such vessel is located is hereby authorized and empowered subject to review by the President to refuse clearance to any such vessel, domestic or foreign, for which clearance is required by law, and by formal notice served upon the owners, master, or person or persons in command or charge of any domestic vessel for which clearance is not required by law, to forbid the

departure of such vessel from the port, and it shall thereupon be unlawful for such vessel to depart.

The collector of customs shall, during the present war, in each case report to the President the amount of gold or silver coin or bullion or other moneys of the United States contained in any cargo intended for export. Such report shall include the names and addresses of the consignors and consignees, together with any facts known to the collector with reference to such shipment and particularly those which may indicate that such gold or silver coin or bullion or moneys of the United States may be intended for delivery or may be delivered, directly or indirectly, to an enemy or an ally of enemy. [40 Stat. L. 424.]

SEC. 15. [Appropriation.] That the sum of \$450,000 is hereby appropriated, out of any money in the Treasury of the United States not otherwise appropriated, to be used in the discretion of the President for the purpose of carrying out the provisions of this Act during the fiscal year ending June thirtieth, nineteen hundred and eighteen, and for the payment of salaries of all persons employed under this Act, together with the necessary expenses for transportation, subsistence, rental of quarters in the District of Columbia, books of reference, periodicals, stationery, typewriters and exchanges thereof, miscellaneous supplies, printing to be done at the Government Printing Office, and all other necessary expenses not included in the foregoing. [40 Stat. L. 425.]

SEC. 16. [Violations of Act or regulations thereunder—penalty.] That whoever shall willfully violate any of the provisions of this Act or of any license, rule, or regulation issued thereunder, and whoever shall willfully violate, neglect, or refuse to comply with any order of the President issued in compliance with the provisions of this Act shall, upon conviction, be fined not more than \$10,000, or, if a natural person, imprisoned for not more than ten years, or both; and the officer, director, or agent of any corporation who knowingly participates in such violation shall be punished by a like fine, imprisonment, or both, and any property, funds, securities, papers, or other articles or documents, or any vessel, together with her tackle, apparel, furniture, and equipment, concerned in such violation shall be forfeited to the United States. [40 Stat. L. 425.]

SEC. 17. [Jurisdiction of courts.] That the district courts of the United States are hereby given jurisdiction to make and enter all such rules as to notice and otherwise, and all such orders and decrees, and to issue such process as may be necessary and proper in the premises to enforce the provisions of this Act, with a right of appeal from the final order or decree of such court as provided in sections one hundred and twenty-eight and two hundred and thirty-eight of the Act of March third, nineteen hundred and eleven, entitled "An Act to codify, revise, and amend the laws relating to the judiciary." [40 Stat. L. 425.]

For Judicial Code, §§ 128, 238, mentioned in the text, see 1912 Supp. Fed. Stat. Ann. pp. 196, 231; 5 Fed. Stat. Ann. (2d ed.) 607, 794.

28 [2d ed.]

SEC. 18. [Courts of Philippine Islands and Canal Zone.] That the several courts of first instance in the Philippine Islands and the district court of the Canal Zone shall have jurisdiction of offenses under this Act committed within their respective districts, and concurrent jurisdiction with the district courts of the United States of offenses under this Act committed upon the high seas and of conspiracies to commit such offense as defined by section thirty-seven of the Act entitled "An Act to codify, revise, and amend the penal laws of the United States," approved March fourth, nineteen hundred and nine, and the provisions of such section for the purpose of this Act are hereby extended to the Philippine Islands and to the Canal Zone. [40 Stat. L. 425.]

For Penal Laws, § 37, mentioned in this section, see 1909 Supp. Fed. Stat. Ann. p. 415; 7 Fed. Stat. Ann. (2d ed.) 534.

SEC. 19. [Publications in foreign language concerning the Government, conduct of the war, etc.—filing translation—permit to publish without translation—penalty for false affidavit.] That ten days after the approval of this Act and until the end of the war, it shall be unlawful for any person, firm, corporation, or association, to print, publish, or circulate, or cause to be printed, published, or circulated in any foreign language, any news item, editorial or other printed matter, respecting the Government of the United States, or of any nation engaged in the present war, its policies, international relations, the state or conduct of the war, or any matter relating thereto: *Provided*, That this section shall not apply to any print, newspaper, or publication where the publisher or distributor thereof, on or before offering the same for mailing, or in any manner distributing it to the public, has filed with the postmaster at the place of publication, in the form of an affidavit, a true and complete translation of the entire article containing such matter proposed to be published in such print, newspaper, or publication, and has caused to be printed, in plain type in the English language, at the head of each such item, editorial, or other matter, on each copy of such print, newspaper, or publication, the words "True translation filed with the postmaster at on (naming the post office where the translation was filed, and the date of filing thereof), as required by the Act of (here giving the date of this Act).

Any print, newspaper, or publication in any foreign language which does not conform to the provisions of this section is hereby declared to be nonmailable, and it shall be unlawful for any person, firm, corporation, or association, to transport, carry, or otherwise publish or distribute the same, or to transport, carry or otherwise publish or distribute any matter which is made nonmailable by the provisions of the Act relating to espionage, approved June fifteenth, nineteen hundred and seventeen: *Provided further*, That upon evidence satisfactory to him that any print, newspaper, or publication, printed in a foreign language may be printed, published, and distributed free from the foregoing restrictions and conditions without detriment to the United States in the conduct of the present war, the President may cause to be issued to the printers or publishers of such print, newspaper, or publication, a permit to print, publish, and circulate the issue or issues of their print, newspaper, or publication, free from such

restrictions and requirements, such permits to be subject to revocation at his discretion. And the Postmaster General shall cause copies of all such permits and revocations of permits to be furnished to the postmaster of the post office serving the place from which the print, newspaper, or publication, granted the permit is to emanate. All matter printed, published and distributed under permits shall bear at the head thereof in plain type in the English language, the words, "Published and distributed under authority of the Act of _____ (here giving date of this Act), on _____ post office of _____ (giving name of office)."

Whoever shall make an affidavit containing any false statement in connection with the translation provided for in this section shall be guilty of the crime of perjury and subject to the punishment provided in section one hundred and twenty-five of the Act of March thirteen hundred and nine, entitled "An Act to codify, revise, and amend the penal laws of the United States," and any person, firm, or association, violating any other requirement of this section in connection therewith, be punished by a fine of not more than \$500, or imprisonment of not more than one year, or, in the discretion of the court, may be both fined and imprisoned. [40 Stat. L. 425.]

Espionage Act of June 16, 1917, ch. 30, mentioned in the text, see CRIMINAL 120.

Laws, § 125, mentioned in the text, see 1909 Supp. Fed. Stat. Ann. 437; Ann. (2d ed.) 670.

[Taxes assessed against money or other property held by alien property custodian — payment.] * * * All taxes heretofore or lawfully assessed by any body politic against money or other property held by the alien property custodian shall be paid out of such other property, and if that be insufficient, shall be charged against and paid out of any other moneys or properties required from the alien or ally of enemy. [— Stat. L. —.]

Under the Sundry Civil Appropriation Act of July 1, 1918, ch. —, following appropriation for the expenses of the alien property custodian.

TRANSFER TAX

See INTERNAL REVENUE.

TREASURY DEPARTMENT

Act of July 1, 1916, ch. 209, 868.

Reports of Auditor — Unpaid Checks, 868.

Act of July 8, 1916, ch. 464, 868.

Secretary of Treasury — Estimates of Appropriations, 868.

Act of March 3, 1917, ch. 163, 869.

Sec. 1. Auditors for Post Office Department — Diminishing Number of Positions, 869.

Services of Skilled Draftsmen and Other Technical Services — Employment in Office of Coast Guard, 869.

Act of June 12, 1917, ch. 27, 869.

Sec. 1. Enforcement of Laws Relating to Department — Detail of Persons, 869.

Paper for Currency, etc. — Consolidation of Stock Accounts, 869.

Act of Sept. 27, 1917, ch. 58, 870.

Sec. 1. Building for Use of Department — Construction Authorized, 870.

2. Architectural or Other Expert Technical Services, 870.

Act of Oct. 6, 1917, ch. 79, 870.

Sec. 1. Additional Assistant Secretaries, 870.

Office of Comptroller — Additional Employees, 870.

Office of Treasurer — Additional Employees, 870.

CROSS-REFERENCES

Auditing Accounts of Military Establishment, see PUBLIC DEBT.

War Risk Insurance, see WAR DEPARTMENT AND MILITARY ESTABLISHMENT.

SEC. 5. [Reports of Auditor — unpaid checks.] * * * That hereafter at the termination of each fiscal year each Auditor of the Treasury shall report to the Secretary of the Treasury all checks issued by any disbursing officer of the Government as shown by his accounts rendered to such auditor, which shall then have been outstanding and unpaid for three years or more, stating fully in such report the name of the payee, for what purpose each check was given, the office on which drawn, the number of the voucher received therefor, the date, the number, and the amount for which it was drawn, and, when known, the residence of the payee. And such reports shall be in lieu of the returns required of disbursing officers by section three hundred and ten of the Revised Statutes. [39 Stat. L. 336.]

This is from the Sundry Civil Appropriation Act of July 1, 1916, ch. 209.

For R. S. sec. 310, mentioned in the text, see 7 Fed. Stat. Ann. 396; 9 Fed. Stat. Ann. (2d ed.) 847.

SEC. 4. [Secretary of Treasury — estimates of appropriations.] That the Secretary of the Treasury shall not hereafter transmit special or additional estimates of appropriations to Congress unless they shall conform to the requirements of section four of the Act approved June twenty-second, nineteen hundred and six (Thirty-fourth Statutes, page four hundred and forty-eight. [40 Stat. L. 830.]

This is from the Deficiency Appropriation Act of September 8, 1916, ch. 464.

For the Act of June 22, 1906, ch. 3514, § 4, mentioned in the text, see 1909 Supp. Fed. Stat. Ann. 125; 3 Fed. Stat. Ann. (2d ed.) 134.

[SEC. 1.] **[Auditors for Post Office Department — diminishing number of positions.]** * * * Hereafter the Secretary of the Treasury may diminish from time to time, as vacancies occur by death, resignation, or otherwise, the number of positions of the several grades below the grade of chief of division in the Office of the Auditor for the Post Office Department and use the unexpended balances of the appropriations for the positions so diminished as a fund to pay the compensation, as fixed by the Secretary of the Treasury, of such number of employees as may be necessary to audit the accounts and vouchers of the Postal Service. [39 Stat. L. 1086.]

This and the following paragraph of the text are from the Legislative, Executive, and Judicial Appropriation Act of March 3, 1917, ch. 163.

[Services of skilled draftsmen and other technical services — employment in office of Coast Guard.] * * * The services of skilled draftsmen, and such other technical services as the Secretary of the Treasury may deem necessary may be employed only in the office of the Coast Guard in connection with the construction and repair of Coast Guard cutters, to be paid from the appropriation "Repairs to Coast Guard cutters": * * * A statement of the persons employed hereunder, their duties, and the compensation paid to each, shall be made to Congress each year in the annual estimates. [39 Stat. L. 1087.]

See the note to the preceding paragraph of the text.

Provisions identical with those of this paragraph were made by the like Act of May 10, 1916, ch. 117, § 1, 39 Stat. L. 83.

[SEC. 1.] **[Enforcement of laws relating to Department — detail of persons.]** * * * The Secretary of the Treasury is authorized to use for, and in connection with, the enforcement of the laws relating to the Treasury Department and the several branches of the public service under its control, not exceeding at any one time four persons paid from the appropriation for the collection of customs, four persons paid from the appropriation for salaries and expenses of internal-revenue agents or from the appropriation for the foregoing purpose, and four persons paid from the appropriation for suppressing counterfeiting and other crimes, but not exceeding six persons so detailed shall be employed at any one time hereunder: *Provided*, That nothing herein contained shall be constructed [*sic*] to deprive the Secretary of the Treasury from making any detail now otherwise authorized by existing law. [40 Stat. L. 118.]

This and the following paragraph of the text are from the Sundry Civil Appropriation Act of June 12, 1917, ch. 27.

Provisions similar to those of this paragraph appear almost annually.

[Paper for currency, etc.—consolidation of stock accounts.] * * * The Secretary of the Treasury is authorized to consolidate the stock accounts of distinctive paper for United States currency and for national-bank and Federal Reserve Bank currency, same to be held for issue on the basis of printing authorized by Congress. [40 Stat. L. 119.]

See the note to the preceding paragraph of the text.

An Act To authorize the construction of a building for the use of the Treasury Department.

[*Act of Sept. 27, 1917, ch. 58, 40 Stat. L. 295.*]

[SEC. 1.] [**Building for use of department — construction authorized.**] That the Secretary of the Treasury be, and he is hereby, authorized and directed to cause to be constructed, upon land belonging to the United States, at the northeast corner of Pennsylvania Avenue and Madison Place, in the city of Washington, District of Columbia, a suitable building, complete, for the use of the Treasury Department, and to cause an underground connection of said building with the Treasury building to be constructed; and the Secretary of the Treasury is hereby authorized and empowered to enter into the necessary contracts at a total limit of cost of said building and underground connection of not to exceed \$1,250,000. [*40 Stat. L. 295.*]

SEC. 2. [**Architectural or other expert technical services.**] That the Secretary of the Treasury is hereby further authorized, without regard to civil-service laws, rules, or regulations, to obtain such special architectural or other expert technical services as he may deem necessary and specially order in writing, and to pay for such services such prices or rates of compensation as he may consider just and reasonable from the appropriation for said building, any statute to the contrary notwithstanding. [*40 Stat. L. 296.*]

[SEC. 1.] [**Additional assistant secretaries.**] * * * For two additional Assistant Secretaries of the Treasury, to be appointed by the President, by and with the advice and consent of the Senate, who are authorized at the rate of \$5,000 per annum each from the date of this Act to the close of the present war and six months thereafter, \$7,500, or so much thereof as may be necessary. [*40 Stat. L. 347.*]

This and the two following paragraphs of the text are from the Deficiencies Appropriations Act of Oct. 6, 1917, ch. 79.

[**Office of Comptroller — additional employees.**] * * * For additional employees from October first, nineteen hundred and seventeen, to June thirtieth, nineteen hundred and eighteen, inclusive, at annual rates of compensation as follows: Five law clerks, at \$2,000 each; clerks — two of class four, one of class three, one of class one; messenger, \$840; in all, \$12,930. [*40 Stat. L. 347.*]

See the note to the preceding paragraph of the text.

[**Office of treasurer — additional employees.**] * * * For additional employees from October first, nineteen hundred and seventeen, to June thirtieth, nineteen hundred and eighteen, inclusive, at annual rates of compensation as follows: Clerks — one of class four, three of class three, three of class two, ten of class one, eight at \$1,000 each, two at \$900 each; expert counters — three at \$1,200 each, two at \$1,000 each, two at \$900 each; in all, \$30,000. [*40 Stat. L. 347.*]

See the note to the second preceding paragraph of the text.

TRUSTS

See TRADE COMBINATIONS AND TRUSTS

UNFAIR COMPETITION

*Act of Sept. 8, 1916, ch. 463, 871.**Title VIII. Unfair Competition, 371.**Sec. 800. Definitions, 871.**801. Importation — Sales Below Actual Market Value, 871.**802. Agreements Restricting Purchase, etc., of Imported Goods, 872.**803. Rules and Regulations, 872.**804. Retaliatory Measures against Countries Prohibiting Importations, 872.**805. Retaliatory Measures against Countries at War, 873.**806. Same, 873.*

SEC. 800. [Definitions.] That when used in this title the term "person" includes partnerships, corporations, and associations. [39 Stat. L. 798.]

The foregoing section 800 and the following sections 801-806 constitute "Title VIII, Unfair Competition," of the Act of Sept. 8, 1916, ch. 463, entitled An Act To increase the revenue and for other purposes. For a reference to the entire Act see the notes to section 15 thereof in INTERNAL REVENUE, *ante*, p. 374, sections 900, 902 of this Act, given in INTERNAL REVENUE, *ante*, p. 381, provide respectively that the invalidity of any part of the Act shall not affect the remainder and that the Act shall take effect on the day following its passage unless otherwise provided.

SEC. 801. [Importation — sales below actual market value.] That it shall be unlawful for any person importing or assisting in importing any articles from any foreign country into the United States, commonly and systematically to import, sell or cause to be imported or sold such articles within the United States at a price substantially less than the actual market value or wholesale price of such articles, at the time of exportation to the United States, in the principal markets of the country of their production, or of other foreign countries to which they are commonly exported after adding to such market value or wholesale price, freight, duty, and other charges and expenses necessarily incident to the importation and sale thereof in the United States: *Provided*, That such act or acts be done with the intent of destroying or injuring an industry in the United States, or of preventing the establishment of an industry in the United States, or of restraining or monopolizing any part of trade and commerce in such articles in the United States.

Any person who violates or combines or conspires with any other person to violate this section is guilty of a misdemeanor, and, on conviction thereof, shall be punished by a fine not exceeding \$5,000, or imprisonment not exceeding one year, or both, in the discretion of the court.

Any person injured in his business or property by reason of any violation of, or combination or conspiracy to violate, this section, may sue therefor in the district court of the United States for the district in which the defendant resides or is found or has an agent, without respect to the amount in controversy, and shall recover threefold the damages sustained, and the cost of the suit, including a reasonable attorney's fee.

The foregoing provisions shall not be construed to deprive the proper State courts of jurisdiction in actions for damages thereunder. [39 Stat. L. 798.]

See the note to the preceding section 800 of this Act.

SEC. 802. [Agreements restricting purchase, etc., of imported goods.] That if any article produced in a foreign country is imported into the United States under any agreement, understanding, or condition that the importer thereof or any other person in the United States shall not use, purchase, or deal in, or shall be restricted in his using, purchasing, or dealing in, the articles of any other person, there shall be levied, collected, and paid thereon, in addition to the duty otherwise imposed by law, a special duty equal to double the amount of such duty: *Provided*, That the above shall not be interpreted to prevent the establishing in this country on the part of a foreign producer of an exclusive agency for the sale in the United States of the products of said foreign producer or merchant, nor to prevent such exclusive agent from agreeing not to use, purchase, or deal in the article of any other person, but the proviso shall not be construed to exempt from the provisions of this section any article imported by such exclusive agent if such agent is required by the foreign producer or if it is agreed between such agent and such foreign producer that any agreement, understanding or condition set out in this section shall be imposed by such agent upon the sale or other disposition of such article to any person in the United States. [39 Stat. L. 799.]

See the note to section 800 of this Act, *supra*, p. 871.

SEC. 803. [Rules and regulations.] That the Secretary of the Treasury shall make such rules and regulations as are necessary for the carrying out of the provisions of section eight hundred and two. [39 Stat. L. 799.]

See the note to section 800 of this Act, *supra*, p. 871.

SEC. 804. [Retaliatory measures against countries prohibiting importations.] That whenever any country, dependency, or colony shall prohibit the importation of any article the product of the soil or industry of the United States and not injurious to health or morals, the President shall have power to prohibit, during the period such prohibition is in force, the importation into the United States of similar articles, or in case the United States does not import similar articles from that country, then other articles, the products of such country, dependency, or colony.

And the Secretary of the Treasury, with the approval of the President, shall make such rules and regulations as are necessary for the execution of the provisions of this section. [39 Stat. L. 799.]

See the note to section 800 of this Act, *supra*, p. 871.

SEC. 805. [Retaliatory measures against countries at war.] That whenever during the existence of a war in which the United States is not engaged, the President shall be satisfied that there is reasonable ground to believe that under the laws, regulations, or practices of any country, colony, or dependency contrary to the law and practice of nations, the importation into their own or any other country, dependency, or colony of any article the product of the soil or industry of the United States and not injurious to health or morals is prevented or restricted the President is authorized and empowered to prohibit or restrict during the period such prohibition or restriction is in force, the importation into the United States of similar or other articles, products of such country, dependency, or colony as in his opinion the public interest may require; and in such case he shall make proclamation stating the article or articles which are prohibited from importation into the United States; and any person or persons who shall import, or attempt or conspire to import, or be concerned in importing, such article or articles into the United States contrary to the prohibition in such proclamation, shall be liable to a fine of not less than \$2,000 nor more than \$50,000, or to imprisonment not to exceed two years, or both, in the discretion of the court. The President may change, modify, revoke, or renew such proclamation in his discretion. [39 Stat. L. 799.]

See the note to section 800 of this Act, *supra*, p. 871.

SEC. 806. [Same.] That whenever during the existence of a war in which the United States is not engaged, the President shall be satisfied that there is reasonable ground to believe that any vessel, American or foreign, is, on account of the laws, regulations, or practices of a belligerent Government, making or giving any undue or unreasonable preference or advantage in any respect whatsoever to any particular person, company, firm, or corporation, or any particular description of traffic in the United States or its possessions or to any citizens of the United States residing in neutral countries abroad, or is subjecting any particular person, company, firm, or corporation or any particular description of traffic in the United States or its possessions, or any citizens of the United States residing in neutral countries abroad to any undue or unreasonable prejudice, disadvantage, injury, or discrimination in regard to accepting, receiving, transporting, or delivering, or refusing to accept, receive, transfer, or deliver any cargo, freight or passengers, or in any other respect whatsoever, he is hereby authorized and empowered to direct the detention of such vessels by withholding clearance or by formal notice forbidding departure, and to revoke, modify, or renew any such direction.

That whenever, during the existence of a war in which the United States is not engaged, the President shall be satisfied that there is reasonable ground to believe that under the laws, regulations, or practices of any belligerent country or Government, American ships or American citizens are not accorded any of the facilities of commerce which the vessels or citizens of that belligerent country enjoy in the United States or its possessions, or are not accorded by such belligerent equal privileges or facilities of trade with vessels or citizens of any nationality other than that of such belligerent, the President is hereby authorized and empowered to withhold clearance from one or more vessels of such belligerent country

until such belligerent shall restore to such American vessels and American citizens reciprocal liberty of commerce and equal facilities of trade; or the President may direct that similar privileges and facilities, if any, enjoyed by vessels or citizens of such belligerent in the United States or its possessions be refused to vessels or citizens of such belligerent; and in such case he shall make proclamation of his direction, stating the facilities and privileges which shall be refused, and the belligerent to whose vessels or citizens they are to be refused, and thereafter the furnishing of such prohibited privileges and facilities to any vessel or citizen of the belligerent named in such proclamation shall be unlawful; and he may change, modify, revoke, or renew such proclamation; and any person or persons who shall furnish or attempt or conspire to furnish or be concerned in furnishing or in the concealment of furnishing facilities or privileges to ships or persons contrary to the prohibition in such proclamation shall be liable to a fine of not less than \$2,000 nor more than \$50,000 or to imprisonment not to exceed two years, or both, in the discretion of the court.

In case any vessel which is detained by virtue of this Act, shall depart or attempt to depart from the jurisdiction of the United States without clearance or other lawful authority, the owner or master or person or persons having charge or command of such vessel shall be severally liable to a fine of not less than \$2,000 nor more than \$10,000, or to imprisonment not to exceed two years, or both, and in addition such vessel shall be forfeited to the United States.

That the President of the United States is hereby authorized and empowered to employ such part of the land or naval forces of the United States as shall be necessary to carry out the purposes of this Act. [39 Stat. L. 799.]

See the note to section 800 of this Act, *supra*, p. 871.

UNIFORMS

Protection of, see COAST GUARD; CRIMINAL LAW; WAR DEPARTMENT AND MILITARY ESTABLISHMENT.

UNITED STATES COTTON FUTURES ACT

See INTERNAL REVENUE.

UNITED STATES GRAIN STANDARDS ACT

See AGRICULTURE.

UNITED STATES SHIPPING BOARD

See SHIPPING AND NAVIGATION.

UNITED STATES WAREHOUSE ACT

See WAREHOUSES.

VIRGIN ISLANDS

See WEST INDIAN ISLANDS.

VOCATIONAL REHABILITATION

Act of June 27, 1918, ch. —, 875.

- Sec. 1. "Vocational Rehabilitation Act" — "Board" — "Bureau," 875.*
2. Persons Affected by Act — Course of Vocational Rehabilitation Prescribed — Monthly Compensation — Family Allowances, 876.
3. Cost of Instruction, 877.
4. Board for Vocational Education — Powers, 877.
5. Studies, Investigations, and Reports, 877.
6. Medical and Surgical Work or Other Treatment — Control — Co-operation of Board with War and Navy Department, 877.
7. Gifts and Donations, 878.
8. Available Appropriations to Meet Expenses, 878.
9. Reports to Congress, 878.
10. Repeal of Conflicting Statute, 879.
11. Persons of Draft Age Employed under Terms of Act — Exemption, 879.

CROSS-REFERENCE

See *EDUCATION*.

An Act To provide for vocational rehabilitation and return to civil employment of disabled persons discharged from the military or naval forces of the United States, and for other purposes.

[*Act of June 27, 1918, ch. —, — Stat. L. —.*]

[*Sec. 1.*] [**"Vocational Rehabilitation Act" — "board" — "bureau."**] That this Act shall be known as the Vocational Rehabilitation Act. That the word "board," as hereinafter used in this Act, shall mean the "Federal Board for Vocational Education." That the word "bureau," as hereinafter used in this Act, shall mean the "Bureau of War-Risk Insurance." [*— Stat. L. —.*]

SEC. 2. [Persons affected by Act — course of vocational rehabilitation prescribed — monthly compensation — family allowances.] That every person who is disabled under circumstances entitling him, after discharge from the military or naval forces of the United States, to compensation under Article III of the Act entitled "An Act to amend an Act entitled 'An Act to authorize the establishment of a Bureau of War-Risk Insurance in the Treasury Department,' " approved October sixth, nineteen hundred and seventeen, hereinafter referred to as "said Act," and who, after his discharge, in the opinion of the board, is unable to carry on a gainful occupation, to resume his former occupation, or to enter upon some other occupation, or having resumed or entered upon such occupation is unable to continue the same successfully, shall be furnished by the said board, where vocational rehabilitation is feasible, such course of vocational rehabilitation as the board shall prescribe and provide.

The board shall have power, and it shall be its duty, to furnish the persons included in this section suitable courses of vocational rehabilitation to be prescribed and provided by the board, and every person electing to follow such a course of vocational rehabilitation shall, while following the same, receive monthly compensation equal to the amount of his monthly pay for the last month of his active service, or equal to the amount to which he would be entitled under Article III of said Act, whichever amount is the greater. If such person was an enlisted man at the time of his discharge, for the period during which he is so afforded a course of rehabilitation, his family shall receive compulsory allotment and family allowance according to the terms of Article II of said Act in the same manner as if he were an enlisted man, and for the purpose of computing and paying compulsory allotment and family allowance his compensation shall be treated as his monthly pay: *Provided*, That if such person willfully fails or refuses to follow the prescribed course of vocational rehabilitation which he has elected to follow, in a manner satisfactory to the board, the said board in its discretion may certify to that effect to the bureau and the said bureau shall, during such period of failure or refusal, withhold any part or all of the monthly compensation due such person and not subject to compulsory allotment which the said board may have determined should be withheld: *Provided, however*, That no vocational teaching shall be carried on in any hospital until the medical authorities certify that the condition of the patient is such as to justify such teaching.

The military and naval family allowance appropriation provided for in section eighteen of said Act shall be available for the payment of the family allowances provided by this section; and the military and naval compensation appropriation provided for in section nineteen of said Act shall be available for the payment of the monthly compensation herein provided. No compensation under Article III of said Act shall be paid for the period during which any such person is furnished by said board a course of vocational rehabilitation except as is hereinbefore provided. [— *Stat. L.* —.]

For the War Risk Insurance Act of Sept. 2, 1914, ch. 293, art. III, as amended by the Act of Oct. 6, 1917, ch. 105, mentioned in the text, see **WAR DEPARTMENT AND MILITARY ESTABLISHMENT**.

SEC. 3. [Cost of instruction.] That the courses of vocational rehabilitation provided for under this Act shall, as far as practicable and under such conditions as the board may prescribe, be made available without cost for instruction for the benefit of any person who is disabled under circumstances entitling him, after discharge from the military or naval forces of the United States, to compensation under Article III of said Act and who is not included in section two hereof. [— *Stat. L.* —.]

SEC. 4. [Board for vocational education — powers.] That the board shall have the power and it shall be its duty to provide such facilities, instructors, and courses as may be necessary to insure proper training for such persons as are required to follow such courses as herein provided; to prescribe the courses to be followed by such persons; to pay, when in the discretion of the board such payment is necessary, the expense of travel, lodging, subsistence, and other necessary expenses of such persons while following the prescribed courses; to do all things necessary to insure vocational rehabilitation; to provide for the placement of rehabilitated persons in suitable or gainful occupations. The board shall have the power to make such rules and regulations as may be necessary for the proper performance of its duties as prescribed by this Act, and is hereby authorized and directed to utilize, with the approval of the Secretary of Labor, the facilities of the Department of Labor, in so far as may be practicable, in the placement of rehabilitated persons in suitable or gainful occupations. [— *Stat. L.* —.]

SEC. 5. [Studies, investigations, and reports.] That it shall also be the duty of the board to make or cause to have made studies, investigations, and reports regarding the vocational rehabilitation of disabled persons and their placement in suitable or gainful occupations. When the board deems it advisable, such studies, investigations, and reports may be made in cooperation with or through other departments and bureaus of the Government, and the board in its discretion may cooperate with such public or private agencies as it may deem advisable in performing the duties imposed upon it by this Act. [— *Stat. L.* —.]

SEC. 6. [Medical and surgical work or other treatment — control — cooperation of Board with War and Navy Department.] That all medical and surgical work or other treatment necessary to give functional and mental restoration to disabled persons prior to their discharge from the military or naval forces of the United States shall be under the control of the War Department and the Navy Department, respectively. Whenever training is employed as a therapeutic measure by the War Department or the Navy Department a plan may be established between these agencies and the board acting in an advisory capacity to insure, in so far as medical requirements permit, a proper process of training and the proper preparation of instructors for such training. A plan may also be established between the War and Navy Departments and the board whereby these departments shall act in an advisory capacity with the board in the care of the health of the soldier and sailor after his discharge.

The board shall, in establishing its plans and rules and regulations for vocational training, cooperate with the War Department and the Navy Department in so far as may be necessary to effect a continuous process of vocational training. [— *Stat. L.* —.]

SEC. 7. [Gifts and donations.] That the board is hereby authorized and empowered to receive such gifts and donations from either public or private sources as may be offered unconditionally. All moneys received as gifts or donations shall be paid into the Treasury of the United States, and shall constitute a permanent fund, to be called the "special fund for vocational rehabilitation," to be used under the direction of the said board, in connection with the appropriations hereby made or hereafter to be made, to defray the expenses of providing and maintaining courses of vocational rehabilitation; and a full report of all gifts and donations offered and accepted, and all disbursements therefrom, shall be submitted annually to Congress by said board. [— *Stat. L.* —.]

SEC. 8. [Available appropriations to meet expenses.] That there is hereby appropriated, out of any money in the Treasury of the United States not otherwise appropriated, available immediately and until expended, the sum of \$2,000,000 or so much thereof as may be necessary to be used by the Federal Board for Vocational Education for the purposes of this Act, to wit, for renting and remodeling buildings and quarters, repairing, maintaining, and equipping same, and for equipment and other facilities necessary for proper instruction of disabled persons, \$250,000; for the preparation of instructors and salaries of instructors, supervisors, and other experts, including necessary traveling expenses, \$545,000; for traveling expenses of disabled persons in connection with training and for lodging, subsistence, and other necessary expenses in special cases of persons following prescribed courses, \$250,000; for tuition for disabled persons pursuing courses in existing institutions, public or private, \$545,000; for the placement and supervision after placement of vocationally rehabilitated persons, \$45,000; for studies, investigations, reports, and preparation of special courses of instruction, \$55,000; for miscellaneous contingencies, including special mechanical appliances necessary in special cases for disabled men, \$110,000; and for the administrative expenses of said board incident to performing the duties imposed by this Act, including salaries of such assistants, experts, clerks, and other employees in the District of Columbia or elsewhere as the board may deem necessary, actual traveling and other necessary expenses incurred by the members of the board and by its employees under its orders, including attendance at meetings of educational associations and other organizations, rent and equipment of offices in the District of Columbia and elsewhere, purchase of books of reference, law books, and periodicals, stationery, typewriters and exchange thereof, miscellaneous supplies, postage on foreign mail, printing and binding to be done at the Government Printing Office, and all other necessary expenses, \$200,000. [— *Stat. L.* —.]

SEC. 9. [Reports to Congress.] That said board shall file with the Clerk of the House and the Secretary of the Senate on July first and every three

months thereafter, for the information of the Congress, an itemized account of all expenditures made under this Act, including names and salaries of employees. Said board shall also make an annual report to the Congress of its doings under this Act on or before December first of each year. [—*Stat. L.* —.]

SEC. 10. [Repeal of conflicting statute.] That section three hundred and four of the Act entitled "An Act to authorize the establishment of a Bureau of War Risk Insurance in the Treasury Department" approved September second, nineteen hundred and fourteen, as amended, is hereby repealed. [—*Stat. L.* —.]

The War Risk Insurance Act of Sept. 2, 1914, ch. 293, § 304, as amended by the Act of Oct. 6, 1917, ch. 105, repealed by the text, was as follows:

"Sec. 304. That in cases of dismemberment, of injuries to sight or hearing, and of other injuries commonly causing permanent disability, the injured person shall follow such course or courses of rehabilitation, reeducation, and vocational training as the United States may provide or procure to be provided. Should such course prevent the injured person from following a substantially gainful occupation while taking same, a form of enlistment may be required which shall bring the injured person into the military or naval service. Such enlistment shall entitle the person to full pay as during the last month of his active service, and his family to family allowances and allotment as hereinbefore provided, in lieu of all other compensation for the time being.

"In case of his willful failure properly to follow such course or so to enlist, payment of compensation shall be suspended until such willful failure ceases and no compensation shall be payable for the intervening period."

SEC. 11. [Persons of draft age employed under terms of Act — exemption.] No person of draft age physically fit for military service shall be exempted from such service on account of being employed under the terms of this Act. [—*Stat. L.* —.]

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I. THE DEPARTMENT OF WAR

[Assignment of clerks, etc., at headquarters, etc., to the bureaus of War Department.] * * * That no clerk, messenger, or laborer at headquarters of tactical divisions, military departments, brigades, service schools, and office of the Chief of Staff shall be assigned to duty in any bureau of the War Department. [—Stat. L.—]

This and the following paragraph of the text are from the Army Appropriation Act of July 9, 1918, ch. —.

Provisions identical with those of this paragraph have appeared in like Acts for preceding years.

[Transmission of accounts — time.] * * * That the Secretary of the Treasury is hereby authorized in time of war, upon request to the Secretary of War, to extend the period during which money accounts covering expenditures from appropriations for the Army may be transmitted to the Auditor for the War Department after their receipt in the War Department from sixty to ninety days. [—Stat. L.—]

See the note to the preceding paragraph of the text.

II. ORGANIZATION OF THE ARMY

SEC. 11. [Bonus to postmasters for recruits — repeal.] The provision of the Act of June third, nineteen hundred and sixteen, an Act for making further and more effectual provision for the national defense and for other purposes, and the Act of August twenty-ninth, nineteen hundred and sixteen, an Act making appropriations for the naval service for the fiscal year ending June thirtieth, nineteen hundred and seventeen, and for other purposes, authorizing the payment of \$5 to postmasters at second, third, and fourth class offices for each recruit secured by them and accepted by the Army, Navy, and Marine Corps, is hereby repealed. [—Stat. L.—]

This is from the Postal Service Appropriation Act of July 2, 1918, ch. —.

For the provisions of the Act of June 3, 1916, ch. 134, § 27, see 9 Fed. Stat. Ann. (2d ed.) 1032.

The provisions of the Act of Aug. 29, 1916, ch. 417, § 1, 39 Stat. L. 560, repealed by the text, are noted in NAVY, ante, p. 507.

An Act Making appropriations for the support of the Army for the fiscal year ending June thirtieth, nineteen hundred and nineteen.

[*Act of July 9, 1918, ch. —, — Stat. L. —.*]

[Aviation service — college education — requirement.] * * * That no person otherwise qualified for service as a cadet, pilot, military aviator, or other officer in the aviation service, shall be barred from such service by reason of not being equipped with a college education. [*— Stat. L. —.*]

[Apportionment of moneys appropriated for aviation purposes.] * * * That the President may hereafter apportion and allot the moneys herein or heretofore appropriated for aviation purposes in such manner as he may deem most advisable for the accomplishment of said purposes with the same force and effect as though such apportionment had been made by this Act. [*— Stat. L. —.*]

[Exchange of aerial material.] * * * That, subject to the approval of the Secretary of War, motor-propelled vehicles, airplanes, engines, parts thereof, balloons, and appurtenances may be exchanged in part payment for new equipment of the same or similar character to be used for the same purposes as those proposed to be exchanged. [*— Stat. L. —.*]

[Sale of war supplies, material, etc., disposition of proceeds — report.] * * * That the President be, and he hereby is, authorized, through the head of any executive department, to sell, upon such terms as the head of such department shall deem expedient, to any person, partnership, association, corporation, or any other department of the Government, or to any foreign State or Government, engaged in war against any Government with which the United States is at war, any war supplies, material and equipment, and any by-products thereof, and any building, plant or factory, acquired since April sixth, nineteen hundred and seventeen, including the lands upon which the plant or factory may be situated, for the production of such war supplies, materials, and equipment which, during the present emergency, may or may hereafter be purchased, acquired, or manufactured by the United States: *Provided further*, That sales of guns and ammunition made under the authority contained in this or any other Act shall be limited to sales to other departments of the Government and to foreign States or Governments engaged in war against any Government with which the United States is at war, and to members of the National Rifle Association and of other recognized associations organized in the United States for the encouragement of small-arms target practice: *Provided further*, That a detailed report shall be made to Congress on the first day of each regular session of the sales of any war supplies, material, lands, factories, or buildings, and equipment made under the authority contained in this or any other Act, except sales made to any foreign State or Government engaged in war against any Government with which the United States is at war, showing the character of the articles sold, to whom sold, the price received therefor, and the purpose for which sold: *Provided*, That any moneys received by the United States as the proceeds of any such sale shall be deposited to the credit of that appropriation out of which was paid the

cost to the Government of the property thus sold, and the same shall immediately become available for the purposes named in the original appropriation. [— *Stat. L.* —.]

[Draft boards — rent of quarters — payments for rents.] That, during the present emergency, the requirements of section thirty-seven hundred and forty-four of the Revised Statutes shall not apply to the rent of quarters for the use of local, district, or medical advisory boards where the amount to be paid is less than is customarily charged the public for the same quarters: *Provided*, That all payments made by disbursing officers appointed in connection with the execution of the selective service law for rents unsupported by a lease may be passed to their credit by the accounting officers of the Treasury if otherwise correct. [— *Stat. L.* —.]

For R. S. sec. 3744, see 8 Fed. Stat. Ann. (2d ed.) 361.

[Bands — additional.] * * * That the Secretary of War is authorized to organize for use during the present emergency twenty bands additional to those now authorized for the Army to be organized as are bands of Infantry. [— *Stat. L.* —.]

[Judge Advocate General's Department — grades of first lieutenant and captain authorized.] * * * That during the existing emergency the President is authorized to appoint in the Officers' Reserve Corps and the National Army, for service in the Judge Advocate General's Department, in addition to the grades now authorized, officers of the grades of first lieutenant and captain from such citizens as he shall find to be physically, mentally, and morally qualified for appointment. [— *Stat. L.* —.]

[Appointment from staff corps to line of Army.] * * * That hereafter the President be, and he is hereby, authorized, by and with the advice and consent of the Senate, to appoint any chief of a staff corps, department, or bureau of the Army who has had forty or more years of service in the Army, a major general of the line of the Army. The officers so appointed shall not exceed two, and shall be extra numbers in the list of major generals of the line. [— *Stat. L.* —.]

[Civilian employees of Quartermaster Corps — number and salary limited.] * * * That the number of and total sum paid for civilian employees in the Quartermaster Corps shall be limited to the actual requirements of the service, and that no employee therein shall receive a salary of more than \$150 per month, except upon the approval of the Secretary of War. [— *Stat. L.* —.]

Provisions identical with those of this paragraph appeared in the Deficiency Appropriation Act of July 8, 1918, ch. —, § 1, — *Stat. L.* —, and have appeared for many years.

[Motor ambulances — selection of types.] * * * That the Secretary of War may in his discretion select types and makes of motor ambulances for the Army and authorize their purchase without regard to the laws prescribing advertisement for proposals for supplies and materials for the Army. [— *Stat. L.* —.]

[Medical Department—increase—major general—brigadier generals.] * * * That the Medical Department of the Regular Army be, and is hereby, increased by one Assistant Surgeon General, for service abroad during the present war, who shall have the rank of major general, and two Assistant Surgeons General, who shall have the rank of brigadier general, all of whom shall be appointed from the Medical Corps of the Regular Army. [— *Stat. L.* —.]

[Medical Department—increase—distribution of officers.] * * * That the President may nominate and appoint in the Medical Department of the National Army, by and with the advice and consent of the Senate, from the Medical Reserve Corps of the Regular Army not to exceed two major generals and four brigadier generals.

That the commissioned officers of the Medical Corps of the Regular Army, none of whom shall have rank above that of colonel, shall be proportionately distributed in the several grades as now provided by law.

That the commissioned officers of the Medical Reserve Corps of the Regular Army, none of whom shall have rank above that of colonel, shall be proportionately distributed in the several grades as now provided by law for the Medical Corps of the Regular Army: *Provided*, That nothing in this Act shall be held or construed so as to discharge any officer of the Regular Army or deprive him of a commission which he now holds therein. [— *Stat. L.* —.]

[Bands for Engineer Corps—National Defense Act, sec. 11 amended.] * * * That the second paragraph of section eleven of chapter one hundred thirty-four, Thirty-ninth Statutes, page one hundred seventy-three, be, and the same hereby is, amended to read as follows:

Each regiment of Engineers shall consist of one colonel; one lieutenant colonel; two majors; eleven captains; twelve first lieutenants; six second lieutenants; two master engineers, senior grade; one regimental sergeant major; two regimental supply sergeants; two color sergeants; one sergeant bugler; one cook; one wagoner for each authorized wagon of the field and combat train; one band; and two battalions: *Provided*, That the present Engineer band shall be considered as one of the bands provided for above. [— *Stat. L.* —.]

For the National Defense Act of June 3, 1916, ch. 134, § 11, amended by the text, see 9 Fed. Stat. Ann. (2d ed.) 990.

[Slavic Legion—composition—requisites for membership—training—disposition.] * * * That, under such regulations as the President may prescribe, a force of volunteer troops in such unit or units as he may direct may be raised to be composed of Jugo-Slavs, Czecho Slovaks, and Ruthenians (Ukrainians) belonging to the oppressed races of the Austro-Hungarian or German Empire resident in the United States but not citizens thereof nor subject to the draft. Such force shall be known as the Slavic Legion or by such other description as the President may prescribe. No man shall be enlisted in it until he has furnished satisfactory evidence that he will faithfully and loyally serve the cause of the United States and that he desires to fight the Imperial governments of Germany

and Austria-Hungary, and the allies thereof. The force so raised and duly sworn into the service may be equipped, maintained, and trained with our own troops or separately as the President may direct and thereafter may be transported to such field of action as the President may direct to be used against the common enemy in connection with our own troops or with those of any nation associated with the United States in the present war; and the several items of expense involved in the equipment, maintenance, training, and transportation of such force may be paid from the respective appropriations herein made or from any subsequent appropriations for the same: *Provided*, That American citizens of Austrian or German birth, or who were born in alien enemy territory, who have passed the necessary examination and whose loyalty is unquestioned, may, in the discretion of the Commander in Chief of the Army and Navy, be commissioned in the United States Army or Navy. [— *Stat. L.* —.]

[Civilian employees in gun factories, etc.— pay for work done on legal days of absence.] * * * That the Secretary of War is hereby authorized and empowered, during the period of the war, to make payment, under such regulations as may be prescribed by him, in addition to and at the rate of pay now provided by law to each and all civilians employed by the War Department in gun factories and arsenals for work performed on all days of leave of absence granted by law to such employees. [— *Stat. L.* —.]

[Medals of honor — distinguished — service crosses — distinguished service medals — award — loss — acceptance and wearing of medals presented by foreign governments — presentation to officers and men of allied countries — service in National Guard.] * * * That the provisions of existing law relating to the award of medals of honor to officers, noncommissioned officers, and privates of the Army be, and they hereby are, amended so that the President is authorized to present, in the name of the Congress, a medal of honor only to each person who, while an officer or enlisted man of the Army, shall hereafter, in action involving actual conflict with an enemy, distinguish himself conspicuously by gallantry and intrepidity at the risk of his life above and beyond the call of duty.

That the President be, and he is hereby, further authorized to present, but not in the name of Congress, a distinguished-service cross of appropriate design and a ribbon, together with a rosette or other device, to be worn in lieu thereof, to any person who, while serving in any capacity with the Army of the United States since the sixth day of April, nineteen hundred and seventeen, has distinguished, or who shall hereafter distinguish, himself or herself by extraordinary heroism in connection with military operations against an armed enemy.

That the President be, and he is hereby, further authorized to present, but not in the name of Congress, a distinguished-service medal of appropriate design and a ribbon, together with a rosette or other device, to be worn in lieu thereof, to any person who, while serving in any capacity with the Army of the United States since the sixth day of April, nineteen hundred and seventeen, has distinguished, or who hereafter shall distinguish, himself or herself by exceptionally meritorious service to the Govern-

ment in a duty of great responsibility; and said distinguished-service medal shall also be issued to all enlisted men of the Army to whom the certificate of merit has been granted up to and including the date of the passage of this Act under the provisions of previously existing law, in lieu of such certificate of merit, and after the passage of this Act the award of the certificate of merit for distinguished service shall cease; and additional pay heretofore authorized by law for holders of the certificate of merit shall not be paid to them beyond the date of the award of the distinguished-service medal in lieu thereof as aforesaid.

That each enlisted man of the Army to whom there has been or shall be awarded a medal of honor, a distinguished-service cross, or a distinguished-service medal shall, for each such award, be entitled to additional pay at the rate of \$2 per month from the date of the distinguished act or service on which the award is based, and each bar, or other suitable device, in lieu of a medal of honor, a distinguished-service cross, or a distinguished-service medal, as hereinafter provided for, shall entitle him to further additional pay at the rate of \$2 per month from the date of the distinguished act or service for which the bar is awarded, and said additional pay shall continue throughout his active service, whether such service shall or shall not be continuous; but when the award is in lieu of the certificate of merit, as provided for in section three hereof, the additional pay shall begin with the date of the award.

That no more than one medal of honor or one distinguished service cross or one distinguished-service medal shall be issued to any one person; but for each succeeding deed or act sufficient to justify the award of a medal of honor or a distinguished-service cross or a distinguished-service medal, respectively, the President may award a suitable bar, or other suitable device, to be worn as he shall direct; and for each other citation of an officer or enlisted man for gallantry in action published in orders issued from the headquarters of a force commanded by a general officer he shall be entitled to wear, as the President may direct, a silver star three-sixteenths of an inch in diameter.

That the Secretary of War be, and he is hereby, authorized to expend from the appropriations for contingent expenses of his department from time to time so much as may be necessary to defray the cost of the medals of honor, distinguished-service crosses, distinguished-service medals, bars, rosettes, and other devices hereinbefore provided for.

That whenever a medal, cross, bar, ribbon, rosette, or other device presented under the provisions of this Act shall have been lost, destroyed, or rendered unfit for use, without fault or neglect on the part of the person to whom it was awarded, such medal, cross, bar, ribbon, rosette, or device shall be replaced without charge therefor.

That, except as otherwise prescribed herein, no medal of honor, distinguished-service cross, distinguished-service medal, or bar or other suitable device in lieu of either of said medals or of said cross, shall be issued to any person after more than three years from the date of the act justifying the award thereof, nor unless a specific statement or report distinctly setting forth the distinguished service and suggesting or recommending official recognition thereof shall have been made at the time of the distinguished service or within two years thereafter, nor unless it shall appear

from official records in the War Department that such person has so distinguished himself as to entitle him thereto; but in case an individual who shall distinguish himself dies before the making of the award to which he may be entitled, the award may nevertheless be made and the medal or cross or the bar or other emblem or device presented, within three years from the date of the act justifying the award thereof, to such representative of the deceased as the President may designate; but no medal, cross, bar, or other device, hereinbefore authorized, shall be awarded or presented to any individual whose entire service subsequently to the time he distinguished himself shall not have been honorable; but in cases of officers and enlisted men now in the Army for whom the award of the medal of honor has been recommended in full compliance with then existing regulations but on account of services which, though insufficient fully to justify the award of the medal of honor, appear to have been such as to justify the award of the distinguished-service cross or distinguished-service medal hereinbefore provided for, such cases may be considered and acted upon under the provisions of this Act authorizing the award of the distinguished-service cross and distinguished-service medal, notwithstanding that said services may have been rendered more than three years before said cases shall have been considered as authorized by this Act, but all consideration of and action upon any of said cases shall be based exclusively upon official records now on file in the War Department; and in cases of officers and enlisted men now in the Army who have been mentioned in orders, now a part of official records, for extraordinary heroism or especially meritorious services, such as to justify the award of the distinguished-service cross or the distinguished-service medal hereinbefore provided for, such cases may be considered and acted on under the provisions of this Act, notwithstanding that said act or services may have been rendered more than three years before said class shall have been considered as authorized by this Act, but all consideration of and action upon any said cases shall be based exclusively upon official records of the War Department.

That the President be, and he is hereby, authorized to delegate, under such conditions, regulations, and limitations as he shall prescribe, to the commanding general of a separate army or higher unit in the field, the power conferred upon him by this Act to award the medal of honor, the distinguished-service cross, and the distinguished-service medal; and he is further authorized to make from time to time any and all rules, regulations, and orders which he shall deem necessary to carry into effect the provisions of this Act and to execute the full purpose and intention thereof.

That American citizens who have received, since August first, nineteen hundred and fourteen, decorations or medals for distinguished service in the armies or in connection with the field service of those nations engaged in war against the Imperial German Government, shall, on entering the military service of the United States, be permitted to wear such medals or decorations.

That any and all members of the military forces of the United States serving in the present war be, and they are hereby, permitted and authorized to accept during the present war or within one year thereafter, from the Government of any of the countries engaged in war with any country with which the United States is or shall be concurrently likewise engaged

in war, such decorations, when tendered, as are conferred by such Government upon the members of its own military forces; and the consent of Congress required therefor by clause eight of section nine of Article I of the Constitution is hereby expressly granted: *Provided*, That any officer or enlisted man of the military forces of the United States is hereby authorized to accept and wear any medal or decoration heretofore bestowed by the Government of any of the nations concurrently engaged with the United States in the present war.

That the President is authorized, under regulations to be prescribed by him, to confer such medals and decorations as may be authorized in the military service of the United States upon officers and enlisted men of the military forces of the countries concurrently engaged with the United States in the present war.

That the Secretary of War be, and he is hereby, authorized and directed to procure a bronze medal, with suitable device and ribbon, to be presented to each of the several officers and enlisted men, and families of such as may be dead, of the National Guard who, under the orders of the President of the United States, served not less than ninety days in the War with Spain, and who have received an honorable discharge from the service, and who served on the Mexican border in the years nineteen hundred and sixteen and nineteen hundred and seventeen and who are not eligible to receive the Mexican service badge heretofore authorized by the President: *Provided*, That such medals shall not be issued to men who have, subsequent to such service, been dishonorably discharged from the service or deserted: *And provided further*, That the sum of \$7,000, or so much thereof as may be necessary, is hereby appropriated, out of any money in the Treasury not otherwise appropriated, for the purpose of carrying this last paragraph into effect. [— *Stat. L.* —.]

[Materials for Ordnance Department—American manufactures—duty on imported materials.] * * * The Secretary of War is authorized, during the present emergency, in addition to the appropriations and obligations specifically authorized by law, to incur obligations for ordnance and ordnance supplies and materials: *Provided*, That the aggregate amount of such obligations shall not exceed \$500,000,000.

Provided, That out of the authorizations provided for ordnance stores, ammunition, ordnance stores and supplies, small-arms target practice, manufacture of arms, automatic machine rifles, and armored motor cars there is authorized to be expended and is hereby appropriated the sum of \$600,000,000.

Provided further, That all material purchased under the appropriations for the Ordnance Department in this Act shall be of American manufacture, except in cases when, in the judgment of the Secretary of War, it is to the manifest interest of the United States to make purchases abroad, which material shall be admitted free of duty. [— *Stat. L.* —.]

[Payment from total available balances.] * * * That during the present emergency when pressing obligations are required to be paid by a disbursing officer of the Army and the allotment to his official credit under the proper appropriation or appropriations is temporarily insufficient to

pay the same, he is authorized to make payments from the total available balance to his official credit, provided sufficient funds under proper appropriation or appropriations have been appropriated by the chief officer of the bureau or department for the expenditure. When such disbursements are made, the accounts of the disbursing officer shall show the charging of the proper appropriations, and the balances thereunder, which will be adjusted by the disbursing officer on receipt of funds, or by the accounting officer of the Treasury. [— *Stat. L.* —.]

CHAPTER V.

[SEC. 1.] [**Army Nurse Corps — composition.**] That the Nurse Corps (female) of the Medical Department of the Army shall hereafter be known as the Army Nurse Corps, and shall consist of one superintendent, who shall be a graduate of a hospital-training school having a course of instruction of not less than two years; of as many chief nurses, nurses, and reserve nurses as may from time to time be needed and prescribed or ordered by the Secretary of War, and, in the discretion of the Secretary of War, of not exceeding six assistant superintendents, and, for each Army or separate military force beyond the continental limits of the United States, one director and not exceeding two assistant directors of nursing service, all of whom shall be graduates of hospital-training schools and shall have passed such professional, moral, mental, and physical examination as shall be prescribed by the Secretary of War. [— *Stat. L.* —.]

SEC. 2. [**Rules and regulations.**] That rules and regulations prescribing the duties of the members of the Army Nurse Corps shall be prescribed by the Surgeon General of the United States Army, subject to the approval of the Secretary of War. [— *Stat. L.* —.]

SEC. 3. [**Superintendent and members — appointment and removal — promotions.**] That the superintendent shall be appointed by, and, at his discretion, be removed by, the Secretary of War; that all other members of said corps shall be appointed by, and, at his discretion, be removed by, the Surgeon General by and with the approval of the Secretary of War; but the assistant superintendents, the directors, the assistant directors, and the chief nurses shall be appointed by promotion from other members of the corps, and shall, upon being relieved from duty as such, unless removed for incompetency or misconduct, revert to the grades in the corps from which they were promoted. [— *Stat. L.* —.]

SEC. 4. [**Salaries.**] That the annual rate of pay of the members of said corps shall be as follows: Superintendent, \$2,400; assistant superintendents and directors, \$1,800; assistant directors, \$1,500; chief nurses, \$120 in addition to the pay of a nurse; nurses, \$720 for the first period of three years' service, \$780 for the second period of three years' service, \$840 for the third period of three years' service, \$900 for the fourth period of three years' service, and \$960 after twelve years' service in said corps (including in all cases time of service as contract nurse); reserve nurses, when upon active duty, will receive the same pay as nurses who have served in the

corps for periods corresponding to the full period of their active service; and all members of said corps, in addition to the foregoing, the sum of \$10 per month when serving beyond the continental limits of the United States (excepting Porto Rico and Hawaii). [*—Stat. L. —.*]

SEC. 5. [Leave of absence — sick leave.] That members of said Nurse Corps shall be entitled to cumulative leave of absence with pay at the rate of thirty days for each calendar year of service in said corps, not exceeding, however, one hundred and twenty days at one time, and in addition thereto sick leave not exceeding thirty days in any one calendar year in cases of illness or injury incurred in the line of duty. [*— Stat. L. —.*]

SEC. 6. [Traveling allowances — quarters and subsistence — medical care.] That members of said Nurse Corps shall receive transportation and necessary expenses when traveling under orders, and such allowances of quarters and subsistence and, during illness, such medical care as may be prescribed in regulations by the Secretary of War; and when at places where no public quarters are available, commutation in lieu thereof, and of heat and light therefor at such rates and upon such conditions as are now or shall hereafter be provided by law. [*— Stat. L. —.*]

SEC. 7. [Former Acts repealed.] That section nineteen of chapter one hundred and ninety-two of Thirty-first Statutes, page seven hundred and fifty-three; chapter fifty of Thirty-seventh Statutes, page seventy-two; that part of the Act approved August twenty-fourth, nineteen hundred and twelve (Thirty-seventh Statutes, page five hundred and seventy-five), providing for allowances, subsistence, and medical care during illness for the Superintendent of the Nurse Corps; and that part of the Act approved March twenty-third, nineteen hundred and ten (Thirty-sixth Statutes, page two hundred and forty-nine) prescribing the pay of the superintendent and members of the Nurse Corps, be, and the same are, hereby repealed.

For the Act of Feb. 2, 1901, ch. 192, § 19, see 9 Fed. Stat. Ann. (2d ed.) 983.

For the Act of March 4, 1912, ch. 50, see 9 Fed. Stat. Ann. (2d ed.) 1198.

For the Act of March 23, 1910, ch. 115, see 9 Fed. Stat. Ann. (2d ed.) 983.

The Act of Aug. 24, 1912, ch. 391, 37 Stat. L. 575, repealed by the text, was superseded by the permanent provision of the Act of Aug. 29, 1916, ch. 418, § 1. See 9 Fed. Stat. Ann. (2d ed.) 984.

CHAPTER VII.

[Restrictions as to purchase of military supplies — suspension.] * * *
That so much of section eleven hundred and thirty-three of the Revised Statutes, and of section nine of the Act entitled “An Act for making further and more effectual provision for the national defense, and for other purposes,” approved June third, nineteen hundred and sixteen, as restricts the purchase and distribution of military stores and supplies to officers of the Quartermaster Corps. be and the same is hereby, suspended for the period of the present war. [*— Stat. L. —.*]

For R. S. sec. 1133, see 9 Fed. Stat. Ann. (2d ed.) 967.

For the Act of June 3, 1916, ch. 134, see 9 Fed. Stat. Ann. (2d ed.) 963.

CHAPTER VIII.

[Persons discharged from military or naval service — care and treatment.] * * * That the President of the United States is hereby authorized and empowered to make provisions for such care and treatment as he may deem advisable of persons discharged from the military or naval forces of the United States on account of physical disability who are citizens of any nation at war with a nation with which the United States is at war; but such provision shall be made only for the citizens of a nation that makes suitable provision for the care and treatment of persons discharged from the military or naval forces on account of physical disability who are citizens of the United States: *Provided*, That such care and treatment shall in no case exceed the care and treatment authorized by law and regulations for members of the Army and Navy of the United States discharged from the military or naval service for like cause. [— *Stat. L.* —.]

CHAPTER IX.

[Army Mine Planter Service — composition — pay and allowances — retirement.] * * * That hereafter there shall be in the Coast Artillery Corps of the Regular Army a service to be known as the Army Mine Planter Service, which shall consist, for each mine planter in the service of the United States, of one master, one first mate, one second mate, one chief engineer, and one assistant engineer, who shall be warrant officers appointed by and holding their offices at the discretion of the Secretary of War, and two oilers, four firemen, four deck hands, one cook, one steward, and one assistant steward, who shall be appointed from enlisted men of the Coast Artillery Corps under such regulations as the Secretary of War may prescribe: *Provided*, That the Coast Artillery Corps is hereby increased by such numbers of warrant officers and enlisted men as may be necessary to constitute the force provided by this chapter: *Provided further*, That the annual pay of the warrant officers and enlisted men in the various grades established by this chapter shall be as follows: Masters, \$1,800; first mates, \$1,320; second mates, \$972; chief engineers, \$1,700; assistant engineers, \$1,200; oilers, \$432; firemen, \$396; deck hands, \$216; cooks, \$360; steward, \$540; assistant stewards, \$288: *And provided further*, That warrant officers shall have such allowances as the Secretary of War may prescribe, and shall be retired, and shall receive longevity pay, as now provided by law for officers of the Army, and that the enlisted force herein provided for shall receive the allowances and continuous-service pay now provided by law for enlisted men of the Army: *And provided further*, That in computing length of service for retirement, and in computing longevity pay for warrant officers and continuous-service pay for the enlisted men authorized by this chapter, service on boats in the service of the Quartermaster Department of the Quartermaster Corps prior to the passage of this Act shall be counted: *And provided further*, That during the continuation of the present emergency all enlisted men of the Mine Planter Service of the Army of the United States in active service whose base pay does not exceed \$21 per month shall receive an increase of \$15 per month; those whose base pay is \$24, an increase of \$12 per month; those whose base pay is \$30, \$33, \$36, or \$40, an increase of \$8 per month;

and those whose base pay is \$45 or more, an increase of \$6 per month: *And provided further*, That the increases of pay herein authorized shall not enter into the computation of continuous service pay. [— *Stat. L.* —.]

CHAPTER XI.

[Quotas for military service—method for determining.] * * *

That in the determination of quotas for the several States, Territories, and the District of Columbia, or subdivisions thereof, to be raised for military service under the terms of the Act entitled "An Act to authorize the President to increase temporarily the Military Establishment of the United States," approved May eighteenth, nineteen hundred and seventeen, the provisions of the joint resolution approved May sixteenth, nineteen hundred and eighteen, providing for the calling into military service of certain classes of persons registered and liable for military service under the said Act, shall apply to any or all forces heretofore or hereafter raised under the provisions of said Act for any State, Territory, District, or subdivision thereof, from and after the time when such State, Territory, District, or subdivision thereof has been completed or completes its quota of forces called and furnished under the President's proclamation dated July twelfth, nineteen hundred and seventeen. [— *Stat. L.* —.]

For the Act of May 18, 1917, ch. 15, see 9 Fed. Stat. Ann. (2d ed.) 1136.

For the Res. of May 16, 1918, ch. —, see 9 Fed. Stat. Ann. (2d ed.) 1164.

CHAPTER XII.

[SEC. 1.] [Alien—registration and drafting.] That the President may by proclamation set a day or days and place or places for the registration for military service of male aliens within designated ages residing within the United States who are citizens or subjects of a foreign country with whose Government the United States has concluded or hereafter concludes a convention or agreement in accordance with the terms of which its citizens or subjects within designated ages, residing within the United States, become under certain conditions liable to be drafted into the military service of the United States; that upon proclamation by the President stating the time and place of such registration it shall be the duty of any such alien, unless exempted from registration by the terms of the President's proclamation, to present himself for and submit to registration under the provisions of the Act approved May eighteenth, nineteen hundred and seventeen, entitled "An Act to authorize the President to increase temporarily the Military Establishment of the United States," and all amendments thereto, and he shall thereupon be registered in the same manner as those previously registered under the terms of said Act; and every such alien shall be deemed to have notice of the requirements of said Act and this joint resolution upon the publication by the President of any such proclamation, and any such alien who shall willfully fail or refuse to present himself for registration or to submit thereto shall be subject to all the provisions and liable to all the penalties provided in said Act or any amendment thereto. [— *Stat. L.* —.]

For the Act of May 18, 1917, ch. 15, see 9 Fed. Stat. Ann. (2d ed.) 1136.

SEC. 2. [Liability of registered aliens to military service — exceptions.] That any such alien, when registered, shall be and remain liable to military service in the forces of the United States and subject to draft under the provisions of said convention or agreement and of said Act and all amendments thereto, and subject to such regulations as the President may have prescribed or may prescribe under the terms thereof, unless during the period specified in the convention or agreement concluded with the country whereof he is a citizen or subject and designated in the President's proclamation, he shall have enlisted or enrolled in the military forces of his own country or returned to his own country for the purpose of enlisting or enrolling in its military forces, or unless the country whereof he is a citizen or subject, through its diplomatic representatives, in accordance with the terms of the convention or agreement concluded between the United States and such foreign country, shall issue to such alien a certificate of exemption from military service. [— *Stat. L.* —.]

SEC. 3. [Return of alien to native country — liability to service.] That any such alien, after the expiration of time fixed by the President's proclamation within which he may enlist or enroll in the military forces of his own country, return to his own country for the purpose of military service or be exempted through the diplomatic representative of the country whereof he is a citizen or subject, shall be and remain subject in all respects to the terms, provisions, liabilities, and penalties of said Act and all amendments thereto, except as modified by the terms of the convention or agreement concluded between the United States and the country whereof such alien is a citizen or subject, and shall be subject to such regulations as the President may have prescribed or may prescribe under the terms of said Act. [— *Stat. L.* —.]

SEC. 4. [Enlisted Men — selective draft — citizens of neutral countries — Selective Service Act, sec. 2 amended.] That the second sentence of section two of the Act entitled "An Act to authorize the President to increase temporarily the Military Establishment of the United States," approved May eighteenth, nineteen hundred and seventeen, be, and is hereby, amended to read as follows:

"That such draft as herein provided shall be based upon liability to military service of all male citizens or male persons not alien enemies who have declared their intention to become citizens between the ages of twenty-one and thirty years, both inclusive, and shall take place and be maintained under such regulations as the President may prescribe not inconsistent with the terms of this Act: *Provided*, That a citizen or subject of a country neutral in the present war who has declared his intention to become a citizen of the United States shall be relieved from liability to military service upon his making a declaration, in accordance with such regulations as the President may prescribe, withdrawing his intention to become a citizen of the United States, which shall operate and be held to cancel his declaration of intention to become an American citizen and he shall forever be debarred from becoming a citizen of the United States."

For the Act of May 18, 1917, § 2, see 9 Fed. Stat. Ann. (2d ed.) 1156.

CHAPTER XIII.

[Age limit for volunteer duty in Staff Corps — Selective Service Act, sec. 7 amended.] * * * That the first sentence of section seven of the Act entitled "An act to authorize the President to increase temporarily the Military Establishment of the United States," approved May eighteenth, nineteen hundred and seventeen, be, and the same is hereby, amended to read as follows:

"That the qualifications and conditions for voluntary enlistment as herein provided shall be the same as those prescribed by existing law for enlistments in the Regular Army, except that recruits for service in the staff corps and departments may be accepted who are between the ages of forty-one and fifty-five years, both inclusive, at the time of their enlistment, and that all other recruits must be between the ages of eighteen and forty years, both inclusive at the time of their enlistment; and such enlistment shall be for the period of the existing emergency unless sooner discharged." [— *Stat. L.* —.]

For the Act of May 18, 1917, ch. 15, § 7, see 9 Fed. Stat. Ann. (2d ed.) 1160.

CHAPTER XIV.

[Prohibiting prostitution near encampments — Selective Service Act, sec. 13 amended.] * * * That section thirteen of the Act entitled "An Act to authorize the President to increase temporarily the Military Establishment of the United States," approved May eighteenth, nineteen hundred and seventeen, be, and the same is hereby, amended to read as follows, subject to the same modifications as prescribed in the Act approved October sixth, nineteen hundred and seventeen:

"SEC. 13. That during the present emergency it shall be unlawful, within such reasonable distance of any military camp, station, fort, post, cantonment, training or mobilization place as the Secretary of War shall determine to be needful to the efficiency and welfare of the Army, and shall designate and publish in general orders or bulletins, to engage in prostitution or to aid or abet prostitution or to procure or solicit for purposes of prostitution, or to keep or set up a house of ill fame, brothel, or bawdy house, or to receive any person for purposes of lewdness, assignation, or prostitution into any vehicle, conveyance, place, structure, or building, or to permit any person to remain for purposes of lewdness, assignation, or prostitution in any vehicle, conveyance, place, structure, or building; and any person, corporation, partnership, or association violating the provisions of this chapter shall, unless otherwise punishable under the Articles of War, be deemed guilty of a misdemeanor and be punished by a fine of not more than \$1,000, or by imprisonment for not more than one year, or by both such fine and imprisonment, and any person subject to military law violating this chapter shall be punished as provided by the Articles of War; and the Secretary of War is hereby authorized, empowered, and directed to do everything by him deemed necessary to suppress and prevent violation thereof." [— *Stat. L.* —.]

For the Act of May 18, 1917, ch. 15, § 13, see 9 Fed. Stat. Ann. (2d ed.) 1163.

CHAPTER XVII.

[SEC. 1.] [**Amendments to National Defense Act — sec. 10 amended — stable sergeant — first lieutenant in Medical Corps.**] That certain sections of the Act entitled "An Act for making further and more effectual provision for the national defense, and for other purposes," approved June third, nineteen hundred and sixteen, be, and the same are hereby, amended as follows:

That section ten of said Act be, and is hereby, amended by striking out the word "farrier" wherever it occurs in said section and substituting therefor the words "stable sergeant"; change the period at the end of the second paragraph of said section to a colon and add the following: "*And provided further*, That any person who at the time of the approval of this Act shall be and has been an officer of the Medical Reserve Corps, or contract surgeon, on active duty for twelve years subsequent to eighteen hundred and ninety-eight shall be eligible for appointment as first lieutenant in the Medical Corps, subject to examination: *And provided further*, That any officer so eligible who fails to pass the physical examination by reason of disability incurred in line of duty shall be retired with the pay and allowances of a first lieutenant of the Medical Corps." [— *Stat. L. —*.]

For the Act of June 3, 1916, ch. 134, § 10, see 9 Fed. Stat. Ann. (2d ed.) 980.

SEC. 2. [**Sec. 22 amended — enlisted men at recruiting stations — rank.**] That section twenty-two of said Act be, and is hereby amended by striking out the period at the end thereof, substituting therefor a colon, and adding thereto the following: *Provided*, That one of the enlisted men at each main recruiting station who has been detached for duty at such station under the provisions of the Act of Congress approved February second, nineteen hundred and one, may, in the discretion of the Secretary of War, have the rank, pay, and allowances of a first sergeant of Infantry. [— *Stat. L. —*.]

For the Act of June 3, 1916, ch. 134, § 22, see 9 Fed. Stat. Ann. (2d ed.) 1104.

SEC. 3. [**Section 24 amended — second lieutenants — appointment.**] That the second paragraph of section twenty-four of said Act down to the third proviso in said paragraph be, and is hereby, amended to read as follows:

"Vacancies in the grade of second lieutenant, however, arising, in any fiscal year shall be filled by appointment in the following order: (1) Of cadets graduated from the United States Military Academy during the preceding fiscal year for whom vacancies did not become available during the fiscal year in which they were graduated; (2) under the provisions of existing law of enlisted men, including officers of Philippine Scouts, between the ages of twenty-one and thirty-four years, whose fitness for promotion shall have been determined by competitive examination; and of members, including officers, of the Organized Militia, the National Guard, or Naval Militia, between the ages of twenty-one and thirty-four years who have had at least ninety days' actual Federal military service during the calendar year nineteen hundred and sixteen, or subsequent thereto, and whose fitness for promotion shall have been determined by examination;

(3) of commissioned officers of the National Guard, between the ages of twenty-one and twenty-seven years, not otherwise provided for herein; (4) of members of the Officers' Reserve Corps, between the ages of twenty-one and twenty-seven years; (5) of such honor graduates, between the ages of twenty-one and twenty-seven years, of distinguished colleges as are now or may hereafter be entitled to preference by general orders of the War Department; and (6) of candidates from civil life, between the ages of twenty-one and twenty-seven years; and the President is authorized to make the necessary rules and regulations to carry these provisions into effect: *Provided*, That the President is hereby authorized to waive the maximum age limit prescribed by law for appointment as second lieutenant in the Regular Army in the case of any candidate for such appointment who has successfully completed or who may hereafter successfully complete the required examination for such appointment before arriving at the prescribed maximum age limit; but no appointment of any such candidate shall be made to any vacancy which did not exist upon the date he successfully completed the required examination for appointment; and persons appointed under the provisions of this proviso shall be appointed with the rank and date of rank with which they would have been appointed if their appointment had not been prevented by reason of the maximum age limit prescribed by law." [— *Stat. L.* —.]

For the Act of June 3, 1916, ch. 134, § 24, see 9 Fed. Stat. Ann. (2d ed.) 1060.

SEC. 4. [Section 24 amended — retired officer detailed for active duty — major.] That the last proviso of section twenty-four of said Act be, and is hereby, amended by substituting the word "colonel" for the word "major" therein. [— *Stat. L.* —.]

For the Act of June 3, 1916, ch. 134, § 24, see 9 Fed. Stat. Ann. (2d ed.) 1184.

SEC. 5. [Section 28 amended — military telegraphers — pay.] That section twenty-eight of said Act be, and is hereby, amended by striking out the period at the end thereof, substituting therefor a colon, and adding the following:

"*Provided*, That enlisted men who are now qualified or who may hereafter qualify, as expert military telegraphers, shall receive \$5 a month; as first-class military telegraphers, \$3 a month; as military telegraphers, \$2 a month; all in addition to their pay, under such regulations as the Secretary of War may prescribe, but no enlisted man shall receive at the same time additional pay for more than one of the classifications named. [— *Stat. L.* —.]

For the Act of June 3, 1916, ch. 134, § 28, see 9 Fed. Stat. Ann. (2d ed.) 1211.

SEC. 6. [Section 31 amended — Army Reserve — travel expenses, etc.] That section thirty-one of said Act be, and is hereby, amended by striking out the words "travel expenses and pay at the rate of their respective grades in the Regular Army during such periods of training," occurring in lines nine, ten, and eleven, and substituting therefor the following: "From the date of their departure to place where ordered pay and allowances at the rate of their respective grades in the Regular Army, transportation, and reimbursement of cost of subsistence at such rate as may be

fixed by the Secretary of War during travel from home to place where ordered and return to home, and subsistence in kind during period not in transit and while in service." [—Stat. L. —.]

For the Act of June 3, 1916, ch. 134, § 31, see 9 Fed. Stat. Ann. (2d ed.) 1038.

SEC. 7. [Section 42 amended — Reserve Officers' Training Corps — members — discharge.] That section forty-two of said Act be, and is hereby, amended by striking out the period at the end thereof, substituting therefor a colon, and adding the following: "*Provided further*, That upon the recommendation of the professor of military science and tactics of any such institution, the authorities thereof may discharge a member of the Reserve Officers' Training Corps from such corps and from the necessity of completing the course of military training as a prerequisite to graduation." [—Stat. L. —.]

For the Act of June 3, 1916, ch. 134, § 42, see 9 Fed. Stat. Ann. (2d ed.) 1021.

SEC. 8. [Section 51 amended — Officers' Reserve Corps — eligibility to membership.] That section fifty-one of said Act be, and is hereby, amended by striking out the words "prior to the date of this Act," in line three thereof, and substituting therefor the words "prior to July first, nineteen hundred and nineteen."

For the Act of June 3, 1916, ch. 134, § 51, see 9 Fed. Stat. Ann. (2d ed.) 1019

SEC. 9. [Section 55 amended — Enlisted Reserve Corps — pay and allowances.] That the fifth paragraph of section fifty-five of said Act be, and is hereby, amended to read as follows:

"Enlisted men of the Enlisted Reserve Corps shall receive the pay and allowances of their respective grades, but only when ordered into active service and from the date of their departure to place where ordered, transportation and reimbursement of cost of subsistence at such rate as may be fixed by the Secretary of War during travel from home to place where ordered and return home and subsistence in kind during period not in transit and while in service: *Provided*, That said enlisted men shall not be entitled to retirement or retirement pay: *Provided further*, That when any enlisted man of the Enlisted Reserve Corps shall be ordered to active service for purposes of instruction or training he may be paid at any time after the date such order shall become effective for the period from the date of leaving home to date of return thereto as determined in advance, both dates inclusive, and such payment, if otherwise correct, shall pass to the credit of the disbursing officer making the same."

For the Act of June 3, 1916, ch. 134, § 5, see 9 Fed. Stat. Ann. (2d ed.) 1039.

SEC. 10. [Section 125 amended — discharged and furloughed men — equipment — return.] That section one hundred and twenty-five of said Act be, and is hereby, amended by striking out the period at the end thereof, substituting therefor a colon, and adding thereafter the following: "*Provided*, That hereafter, upon the discharge or furlough to the Reserve of an enlisted man, all uniform outer clothing then in his possession, except such articles as he may be permitted to wear from the place of termination

of his active service to his home, as authorized by this section, will be retained for military use; and within four months after such termination of his active service he shall return all uniform clothing, which he was so permitted to retain for wear to his home, by mail, under a franked label which shall be furnished him for the purpose and in conformity with the instructions given him at the time of such termination of his active service; and in case he shall fail to return the same within such period, and in accordance with such instructions, he shall be deemed guilty of a misdemeanor, and, upon conviction, suffer the punishment prescribed by this section: *Provided further*, That upon the release from Federal service of an enlisted man of the National Guard called as such into the service of the United States, all uniform outer clothing then in his possession shall be taken up and accounted for as property issued to the National Guard of the State to which the enlisted man belongs, in the manner prescribed by section sixty-seven of said Act: *And provided further*, That when an enlisted man is discharged otherwise than honorably, all uniform outer clothing in his possession shall be retained for military use, and, when authorized by regulations prescribed by the Secretary of War, a suit of citizen's outer clothing to cost not exceeding \$15 may be issued to such enlisted man: *And provided further*, That officers and members of the National Home for Disabled Volunteer Soldiers may, regardless of the preceding provisions of said Act, wear such uniforms as the Secretary of War may authorize." [— *Stat. L.* —.]

For the Act of June 3, 1916, ch. 134, § 125, see 9 Fed. Stat. Ann. (2d ed.) 1075.

CHAPTER XVIII.

[Graduates of Military Academy — service as instructors.] * * * That the service of graduates of the Military Academy may be utilized during the months of June, July, August, and September of the year in which they graduate as instructors at the citizens' training camps, and their graduation leave may be taken at the termination of their services as instructors at these camps. [— *Stat. L.* —.]

[Mounts of deceased officers — transportation.] * * * That hereafter under such regulations as the Secretary of War may prescribe, authorized mounts of officers who die in the service may, within ninety days after the death of the officer, be transported at public expense from their last duty station to such places within the limits of the United States as may be the home of their families, or as may be designated by their legal representatives or executors, or such mounts may be disposed of as directed by such representatives or executors. [— *Stat. L.* —.]

[Deceased civilian employees — transportation of baggage.] * * * That hereafter, under such regulations as the Secretary of War may prescribe, transportation at public expense may be provided for the baggage of civilian employees who die in the service from their last duty station to such places within the limits of the United States as may be the home of their families, or as may be designated by their legal representatives or executors. [— *Stat. L.* —.]

CHAPTER XIX.

[SEC. 1.] [**Target practice — protection of life and property.**] That in the interest of the national defense, and for the better protection of life and property on said waters, the Secretary of War is hereby authorized and empowered to prescribe such regulations as he may deem best for the use and navigation of any portion or area of the navigable waters of the United States or waters under the jurisdiction of the United States endangered or likely to be endangered by Coast Artillery fire in target practice or otherwise, or by the proving operations of the Government ordnance proving grounds at Sandy Hook, New Jersey, or at any Government ordnance proving ground that may be established elsewhere on or near such waters, and of any portion or area of said waters occupied by submarine mines, mine fields, submarine cables, or other material and accessories pertaining to seacoast fortifications, or by any plant or facility engaged in the execution of any public project of river and harbor improvement; and the said Secretary shall have like power to regulate the transportation of explosives upon any of said waters: *Provided*, That the authority hereby conferred shall be so exercised as not unreasonably to interfere with or restrict the food fishing industry, and the regulations prescribed in pursuance hereof shall provide for the use of such waters by food fishermen operating under permits granted by the War Department. [— *Stat. L.* —.]

SEC. 2. [**Enforcement of regulations — detail of public vessel.**] That to enforce the regulations prescribed pursuant to this chapter, the Secretary of War may detail any public vessel in the service of the War Department, or, upon the request of the Secretary of War, the head of any other department may enforce, and the head of any such department is hereby authorized to enforce, such regulations by means of any public vessel of such department. [— *Stat. L.* —.]

SEC. 3. [**Regulations — posting — penalty for violation.**] That the regulations made [by] the Secretary of War pursuant to this Chapter shall be posted in conspicuous and appropriate places, designated by him, for the information of the public; and every person who and every corporation which shall willfully violate any regulations made by the said Secretary pursuant to this Chapter shall be deemed guilty of a misdemeanor, and upon conviction thereof in any court of competent jurisdiction shall be punished by a fine not exceeding \$500, or by imprisonment (in the case of a natural person) not exceeding six months, in the discretion of the court. [— *Stat. L.* —.]

SEC. 4. [**Jurisdiction.**] That offenses against the provisions of this Chapter or any regulation made pursuant thereto, committed in any Territory or other place subject to the jurisdiction of the United States where there is no court having general jurisdiction of crimes against the United States, shall be cognizable in any court of such place or Territory having original jurisdiction of criminal cases in the place or Territory in which the offense has been committed, with the same right of appeal in all cases as is

given in other criminal cases where imprisonment not exceeding six months forms a part of the penalty, and jurisdiction is hereby conferred upon such courts and such courts shall exercise the same for such purposes; and in case any such offense be committed beyond the territorial jurisdiction of any court having jurisdiction thereof, the offense shall be deemed and held to have been committed within the jurisdiction in which the offender may be found or into which he is first brought, and shall be tried by the court having jurisdiction thereof. [— *Stat. L.* —.]

CHAPTER XX.

[Operation of public utilities — proceeds — disposition.] * * *

That, in case of actual or threatened hostilities, any proceeds received from the operation of a public utility, in connection with engineer operations in the field overseas, shall be available for the purposes of such utility until the close of the fiscal year following that in which the proceeds are received, and a detailed report of such proceeds and application thereof shall be rendered to Congress on forms conforming as far as practicable to those used by American Companies in reports to the Interstate Commerce Commission: *Provided*, That the provision of the Act of March twenty-third, nineteen hundred and ten, making moneys arising from the disposition of serviceable quartermaster material available for the purposes of the appropriation throughout the fiscal year following that in which the disposition was effected, is hereby extended to apply to material supplied to the Army by the Engineer Department. [— *Stat. L.* —.]

For the Act of March 23, 1910, ch. 115, § 1, see 9 Fed. Stat. Ann. (2d ed.) 1078.

[Grades of corporal bugler and bugler first class created.] * * *

That there are hereby created in the Army the grades of corporal bugler, and bugler, first class; and hereafter for each battalion and squadron headquarters of units in which the grade of bugler is now authorized, there shall be one corporal bugler, and for each company, battery, troop, or organization in which the grade of bugler is now authorized there shall be one bugler, first class. [— *Stat. L.* —.]

[Men outside of draft age — enlistment — men physically disqualified — draft.] * * * That during the present war the President be, and he is hereby, authorized to enlist for service in the offices of the War Department or under its control or on detached service under its jurisdiction men outside the draft ages, and for the same purpose to draft men within such ages, who have been disqualified by minor physical defects for active service in the Army; to establish regulations under which such enlistments may be made, and to fix the pay and allowances of men so enlisted or drafted, which said pay and allowances shall not exceed those of enlisted men of the Regular Army. [— *Stat. L.* —.]

[Drafted Army — increase.] * * * That the authority conferred upon the President by the Act approved May eighteenth, nineteen hundred and seventeen, entitled "An Act to authorize the President to increase

temporarily the Military Establishment of the United States," is hereby extended so as to authorize him during each fiscal year to raise by draft as provided in said Act and Acts amendatory thereof the maximum number of men which may be organized, equipped, trained, and used during such year for the prosecution of the present war until the same shall have been brought to a successful conclusion. [— *Stat. L.* —.]

For the Act of May 18, 1917, see 9 Fed. Stat. Ann. (2d ed.) 1136.

[SEC. 1.] [Ordnance Department — disbursing officer — appointment of army officer.] * * * The Chief of Ordnance is authorized to appoint one of the Army officers serving in his office as disbursing officer to pay the civilian employees in the Ordnance Office authorized in this or any other appropriation Act for the fiscal year nineteen hundred and nineteen. [— *Stat. L.* —.]

This is from the Legislative, Executive and Judicial Appropriation Act of July 3, 1918, ch. —.

III. RETIREMENT

[Retirement of officers physically incapacitated — National Defense Act, sec. 23, amended.] * * * That section twenty-three of an Act entitled "An Act for making further and more effectual provision for the national defense, and for other purposes," approved June third, nineteen hundred and sixteen, be, and the same hereby is, amended by adding thereto the following:

"Should any such officer during such provisional period of two years become incapable of performing the duties of his office by reason of physical incapacity resulting from an incident of service, he shall be retired from active service by the President upon the actual rank held by him at the time of retirement in the manner provided by law for the retirement of permanent officers of the Regular Army, and provisional officers retired under the provisions of this section shall be in addition to the number of the officers of the Army on the retired list now fixed by law." [— *Stat. L.* —.]

This and the following paragraph of the text are from the Army Appropriation Act of July 9, 1918, ch. —.

For the National Defense Act of June 3, 1916, ch. 134, § 23, see 9 Fed. Stat. Ann. 1062.

[Retired officers — active duty.] * * * That when any retired officer of the Army is, in the discretion of the President, employed on active duty and assigned to duty in an arm, corps, department, or organization, he shall, for all purposes, except promotion, be considered an officer of such arm, corps, department, or organization while so serving, and shall be an extra number therein. [— *Stat. L.* —.]

See the note to the preceding paragraph of the text.

IV. PAY AND ALLOWANCES

[Mileage to aviation officers.] * * * That hereafter mileage to officers of the Army traveling on duty in connection with aviation shall be paid from the appropriation for the work in connection with which the travel is performed. [— *Stat. L.* —.]

This and the six paragraphs of the text following are from the Army Appropriation Act of July 9, 1918, ch. —.

[Mileage for foreign instructors.] * * * That during the present emergency, officers and enlisted men of foreign armies attached to the United States Army as instructors or inspectors when traveling in the United States on authorized official business pertaining to aviation shall be entitled to receive, from funds appropriated by this Act, the same mileage and transportation allowances as are authorized for officers or enlisted men of the Regular Army. [— *Stat. L.* —.]

See the note to the preceding paragraph of the text.

[Per diem to employees authorized to travel and to members of draft boards.] * * * For all expenses necessary in the registration of persons available for military service and in the selection of certain such persons and their draft into the military service: *Provided*, That per diem allowances in lieu of subsistence not exceeding \$4 may be paid to those employees authorized to travel, and to members of the boards when in attendance upon board meetings at too great a distance from their homes to enable them to live there, \$15,762,000. [— *Stat. L.* —.]

See the note to the first paragraph, *supra*, this page.

[Army field clerks — pay and allowances — entrance pay — increase for foreign service.] * * * That during the present emergency Army field clerks shall have the same allowances and benefits as heretofore allowed by law to pay clerks, Quartermaster Corps, not including retirement: *Provided, however*, That the minimum or entrance pay, exclusive of said allowances, of said Army field clerks shall be \$1,200 per annum: *Provided further*, That Army field clerks shall receive the same increase of pay for service beyond the continental limits of the United States as is now allowed by law to commissioned officers of the Army. [— *Stat. L.* —.]

See the note to the first paragraph, *supra*, this page.

[Officers serving in Canal Zone — housing.] * * * Hereafter officers of the Army pertaining to the United States troops serving in the Canal Zone shall not be required to pay rent for the occupancy of houses of the Panama Canal to which they may be assigned. [— *Stat. L.* —.]

See the note to the first paragraph, *supra*, this page.

[Horses of officers ordered overseas or to Alaska — transportation to remount stations.] That hereafter, under such regulations as the Secretary of War may direct, the authorized horses of mounted officers ordered for duty over the seas or to Alaska may be transported at public expense to remount depots or elsewhere in the United States for safekeeping during the absence of such officers. [— *Stat. L.* —.]

See the note to the first paragraph, *supra*, this page.

[**Enlisted men — travel allowance.**] That in the discretion of the Secretary of War, and under such regulations as he may prescribe, travel pay at the rate now prescribed by law for discharged soldiers may be given to all enlisted men for whom the law authorizes travel allowances as an incident to their entry upon and relief from active duty with the Army. [— *Stat. L.* —.]

See the note to the first paragraph, *supra*, this page.

V. ARTICLES OF WAR

CHAPTER X.

[**Articles of War amended.**] * * * That articles fifty-two, fifty-three, fifty-seven, and one hundred and twelve of section thirteen hundred and forty-two of the Revised Statutes of the United States, as amended by the Act entitled "An Act making appropriations for the support of the Army for the fiscal year ending June thirtieth, nineteen hundred and seventeen, and for other purposes," approved August twenty-ninth, nineteen hundred and sixteen, be, and the same are hereby, amended to read as follows:

"**ART. 52. SUSPENSION OF SENTENCES.**—The authority competent to order the execution of the sentence of a court-martial may, at the time of the approval of such sentence, suspend the execution, in whole or in part, of any such sentence as does not extend to death, and may restore the person under sentence to duty during such suspension. A sentence, or any part thereof, which has been so suspended may be remitted in whole or in part, except in cases of persons confined in the United States Disciplinary Barracks or its branches, by the officer who suspended the same, by his successor in office, or by any officer exercising appropriate court-martial jurisdiction over the command in which the person under sentence may be serving at the time, and subject to the foregoing exceptions the same authority may vacate the order of suspension at any time and order the execution of the sentence or the suspended part thereof in so far as the same shall not have been previously remitted. The death or honorable discharge of a person under suspended sentence shall operate as a complete remission of any unexecuted or unremitted part of such sentence. [— *Stat. L.* —.]

This and the three paragraphs of the text following are from the Army Appropriation Act of July 9, 1918, ch. ____.

For Art. of War 52, amended by the text, see 9 Fed. Stat. Ann. (2d ed.) 1274.

"**ART. 53. EXECUTION OR REMISSION — CONFINEMENT IN DISCIPLINARY BARRACKS.**—When a sentence of dishonorable discharge has been suspended until the soldier's release from confinement, the execution or remission of any part of his sentence shall, if the soldier be confined in the United States Disciplinary Barracks, or any branch thereof, be directed by the Secretary of War." [— *Stat. L.* —.]

For Art. of War 53, see 9 Fed. Stat. Ann. (2d ed.) 1274.

"**ART. 57. FALSE RETURNS — OMISSION TO RENDER RETURNS.**—Every officer commanding a regiment, an independent troop, battery, or company,

or a garrison shall, in the beginning of every month, transmit through the proper channels, to the Department of War, an exact return of the same. Every officer whose duty it is to render to the War Department or other superior authority a return of the state of the troops under his command, or of the arms, ammunition, clothing, funds, or other property thereunto belonging, who knowingly makes a false return thereof shall be dismissed from the service and suffer such other punishment as a court-martial may direct. And any officer who, through neglect or design, omits to render such return shall be punished as a court-martial may direct." [— *Stat. L.* —.]

For Art. of War 57, see 9 Fed. Stat. Ann. (2d ed.) 1275.

"ART. 112. EFFECTS OF DECEASED PERSONS — DISPOSITION OF.— In case of the death of any person subject to military law, the commanding officer of the place of command will permit the legal representative or widow of the deceased, if present, to take possession of all his effects then in camp or quarters, and if no legal representative or widow be present, the commanding officer shall direct a summary court to secure all such effects; and said summary court shall have authority to collect and receive any debts due decedent's estate by local debtors; and as soon as practicable after the collection of such effects said summary court shall transmit such effects, and any money collected, through the Quartermaster Department, at Government expense, to the widow or legal representative of the deceased, if such be found by said court, or to his son, daughter, father, mother, brother, or sister, in the order named, if such be found by said court, or to the beneficiary named by the deceased, if such be found by said court, and such court shall thereupon make to the War Department a full report of its transactions; but if there be none of the persons hereinabove named, or such persons or their addresses are not known to, or readily ascertainable by, said court, and the court shall so find, said summary court shall have authority to convert into cash, by public or private sale, not earlier than thirty days after the death of the deceased, all effects of the deceased, except sabers, insignia, decorations, medals, watches, trinkets, manuscripts, and other articles valuable chiefly as keepsakes; and as soon as practicable after converting such effects into cash said summary court shall deposit with the proper officer, to be designated in regulations, any cash belonging to decedent's estate, and shall transmit a receipt for such deposits, any will or other papers of value belonging to the deceased, any sabers, insignia, decorations, medals, watches, trinkets, manuscripts, and other articles valuable chiefly as keepsakes, together with an inventory of the effects secured by said summary court, and a full account of its transactions to the War Department for transmission to the Auditor for the War Department for action as authorized by law in the settlement of the accounts of deceased officers and enlisted men of the Army.

"The provisions of this article shall be applicable to inmates of the United States Soldiers' Home who die in any United States military hospital outside of the District of Columbia where sent from the home for treatment." [— *Stat. L.* —.]

For Art. of War 112, see 9 Fed. Stat. Ann. (2d ed.) 1294.

VI. WAR RISK INSURANCE

An Act To amend the war-risk insurance Act.

[Act of July 11, 1918, ch. —, — Stat. L.]

[SEC. 1.] [Insurance of vessels of foreign friendly flags, their masters, crews, etc.— War Risk Insurance Act amended — new section.] That the war-risk insurance Act is hereby amended by adding to such Act a new section, to be known as section two b, to read as follows:

“ SEC. 2b. That when it appears to the Secretary of the Treasury that vessels of foreign friendly flags, or their masters, officers, or crews, or shippers or importers in such vessels, are unable in any trade to secure adequate war-risk insurance on reasonable terms, the Bureau of War Risk Insurance, with the approval of the Secretary, is hereby authorized to make provisions for the insurance by the United States of (1) such vessels of foreign friendly flags, their freight and passage moneys, and personal effects of the masters, officers, and crews thereof against the risks of war when such vessels are chartered or operated by the United States Shipping Board or its agent, or chartered by any person a citizen of the United States, and (2) the cargoes to be shipped in such vessels of foreign friendly flags, whether or not they are so chartered. Such insurance on the vessel, however, is authorized only when the United States Shipping Board or its agent operates the vessel or the charterers are, by the terms of the charter party or contract with the vessel owners, required to assume the war risk or provide insurance protecting the vessel owners against war risk during the term of the charter or hire of the vessel.

“ The Bureau of War Risk Insurance with the approval of the Secretary of the Treasury, is also hereby authorized to insure the masters, officers, and crews of vessels operated or chartered as aforesaid against the loss of life or personal injury by the risk of war and for compensation during the detention following capture by enemies of the United States, whenever it appears to the Secretary that the owners, operators, or charterers of such vessels are unable, in any trade, to secure such insurance on reasonable terms.” [— Stat. L. —.]

For the Act of Sept. 2, 1914, ch. 293, see 9 Fed. Stat. Ann. (2d ed.) 1299.

SEC. 2. [Advisory board — duties — compensation — claims — War Risk Insurance Act, sec. 5 amended.] That section five of the war-risk insurance Act is hereby amended to read as follows:

“ SEC. 5. That the Secretary of the Treasury is authorized to establish an advisory board, to consist of three members skilled in the practices of war-risk insurance, for the purpose of assisting the Bureau of War Risk Insurance in fixing rates of premium and in adjustment of claims for losses, and generally in carrying out the purposes of this Act; the compensation of the members of said board to be determined by the Secretary of the Treasury, but not to exceed \$20 a day each while actually employed. He is likewise authorized to appoint two persons skilled in the practice of accident insurance for the purpose of assisting the Bureau of War Risk

Insurance in the adjustment of claims for death, personal injury, or detention; the compensation of persons so appointed to be determined by the Secretary of the Treasury, but not to exceed \$20 a day each while actually employed. In the event of disagreement as to the claim for losses, or amount thereof, between the said bureau and the parties to such contract of insurance, an action on the claim may be brought against the United States in the district court of the United States, sitting in admiralty, in the district in which the claimant or his agents may reside. The Secretary of the Treasury is, in his judgment, authorized to compromise the claim either before or after the institution of an action therein." [— *Stat. L.* —.]

For the Act of Sept. 2, 1914, ch. 293, § 5, see 9 Fed. Stat. Ann. (2d ed.) 1302.

SEC. 3. [Suspension of Act — outstanding insurance or claims — "end of the war" defined — War Risk Insurance Act, sec. 9 amended.] That section nine of the war-risk insurance Act is hereby amended to read as follows:

"SEC. 9. That the President is authorized whenever in his judgment the necessity of further war insurance by the United States shall have ceased to exist to suspend the operation of this Act, in so far as the Division of Marine and Seamen's Insurance is concerned, which suspension shall be made in any event within six months after the end of the war, but shall not affect any insurance outstanding at the time or any claims pending adjustment. For the purpose of the final adjustment of any such outstanding insurance or claims, the Division of Marine and Seamen's Insurance may, in the discretion of the President, be continued in existence for a period not exceeding three years after such suspension.

"The words 'end of the war' as used herein shall be deemed to mean the date of proclamation of exchange of ratification of the treaty of peace, unless the President shall, by proclamation, declare a prior date, in which case the date so proclaimed shall be deemed to be the 'end of the war' within the meaning of this Act." [— *Stat. L.* —.]

For the Act of Sept. 2, 1914, ch. 293, § 9, see 9 Fed. Stat. Ann. (2d ed.) 1304.

WAR RISK INSURANCE

See WAR DEPARTMENT AND MILITARY ESTABLISHMENT

WAR SAVINGS CERTIFICATES

See PUBLIC DEBT

WAREHOUSES

Act of Aug. 11, 1916, ch. 313, 909.

Sec. 1. *United States Warehouse Act*, 909.

2. *Definitions* — "Warehouse," "Agricultural Product," "Person," "Warehouseman," "Receipt," 909.
3. *Authority of Secretary of Agriculture — Licensing Warehouses*, 910.
4. *Issuance of License to Warehouseman*, 910.
5. *Period of License*, 910.
6. *Bond by Applicant for License*, 911.
7. *Suit on Bond*, 911.
8. *Designation of Warehouse as Bonded*, 911.
9. *Licenses to Persons Not Warehousemen — Receipts for Agricultural Products*, 912.
10. *Fees*, 912.
11. *Licenses to Classify or Weigh Agricultural Products*, 912.
12. *Suspension or Revocation of License*, 912.
13. *Duty of Licensed Warehouseman to Receive Agricultural Products*, 913.
14. *Deposits Subject to What Terms and Rules*, 913.
15. *Inspection and Grading of Stored Products by Licensed Person*, 913.
16. *Authority of Warehouseman to Mingle Deposits*, 913.
17. *Receipts — Issuance by Warehouseman*, 913.
18. *Contents of Receipt*, 914.
19. *Standards for Agricultural Products — Establishment by Secretary of Agriculture*, 915.
20. *Effect of Uncancelled Original Receipt — New Receipt*, 915.
21. *Delivery of Stored Products*, 915.
22. *Cancelling Receipts*, 915.
23. *Records and Reports by Warehousemen*, 915.
24. *Examination of Stored Agricultural Product — Findings — Publication*, 916.
25. *Suspension or Revocation of License*, 916.
26. *Publication of Results of Investigations, etc., Names and Addresses of Licensees, etc.*, 916.
27. *Examination of Books, Records, etc.*, 916.
28. *Rules and Regulations*, 916.
29. *Impairment of Laws of Other States and United States*, 917.
30. *Forgery, etc., of Licenses and Receipts*, 917.
31. *Appropriation*, 917.
32. *Effect of Invalidity of Part of Act*, 917.
33. *Right to Amend, etc.*, 917.

[Sec. 1.] [*United States warehouse Act.*] That this part, to be known as the United States warehouse Act, be and is hereby enacted, to read and be effective hereafter as follows:

That this Act shall be known by the short title of "United States warehouse Act."

The foregoing section 1 and the following sections 2-33 constitute "Part C" of the Agricultural Appropriation Act of Aug. 11, 1916, ch. 313.

SEC. 2. [*Definitions* — "warehouse," "agricultural product," "person," "warehouseman," "receipt."] That the term "warehouse" as

used in this Act shall be deemed to mean every building, structure, or other protected inclosure in which any agricultural product is or may be stored for interstate or foreign commerce, or, if located within any place under the exclusive jurisdiction of the United States, in which any agricultural product is or may be stored. The term "agricultural product" wherever used in this Act shall be deemed to mean cotton, wool, grains, tobacco, and flaxseed, or any of them. As used in this Act, "person" includes a corporation or partnership or two or more persons having a joint or common interest; "warehouseman" means a person lawfully engaged in the business of storing agricultural products; and "receipt" means a warehouse receipt. [39 Stat. L. 486.]

See the note to the preceding section 1 of this Act.

SEC. 3. [Authority of Secretary of Agriculture—licensing warehouses.] That the Secretary of Agriculture is authorized to investigate the storage, warehousing, classifying according to grade and otherwise, weighing, and certification of agricultural products; upon application to him by any person applying for license to conduct a warehouse under this Act, to inspect such warehouse or cause it to be inspected; at any time, with or without application to him, to inspect or cause to be inspected all warehouses licensed under this Act; to determine whether warehouses for which licenses are applied for or have been issued under this Act are suitable for the proper storage of any agricultural product or products; to classify warehouses licensed or applying for a license in accordance with their ownership, location, surroundings, capacity, conditions, and other qualities, and as to the kinds of licenses issued or that may be issued for them pursuant to this Act; and to prescribe, within the limitations of this Act, the duties of the warehousemen conducting warehouses licensed under this Act with respect to their care of and responsibility for agricultural products stored therein. [39 Stat. L. 486.]

See the note to section 1 of this Act, *supra*, p. 909.

SEC. 4. [Issuance of license to warehouseman.] That the Secretary of Agriculture is authorized, upon application to him, to issue to any warehouseman a license for the conduct of a warehouse or warehouses in accordance with this Act and such rules and regulations as may be made hereunder: *Provided*, That each such warehouse be found suitable for the proper storage of the particular agricultural product or products for which a license is applied for, and that such warehouseman agree, as a condition to the granting of the license, to comply with and abide by all the terms of this Act and the rules and regulations prescribed hereunder. [39 Stat. L. 486.]

See the note to section 1 of this Act, *supra*, p. 909.

SEC. 5. [Period of license.] That each license issued under sections four and nine of this Act shall be issued for a period not exceeding one year and shall specify the date upon which it is to terminate, and upon

showing satisfactory to the Secretary of Agriculture may from time to time be renewed or extended by a written instrument, which shall specify the date of its termination. [39 Stat. L. 486.]

See the note to section 1 of this Act, *supra*, p. 909.

SEC. 6. [Bond by applicant for license.] That each warehouseman applying for a license to conduct a warehouse in accordance with this Act shall, as a condition to the granting thereof, execute and file with the Secretary of Agriculture a good and sufficient bond other than personal security to the United States to secure the faithful performance of his obligations as a warehouseman under the laws of the State, District, or Territory in which he is conducting such warehouse, as well as under the terms of this Act and the rules and regulations prescribed hereunder, and of such additional obligations as a warehouseman as may be assumed by him under contracts with the respective depositors of agricultural products in such warehouse. Said bond shall be in such form and amount, shall have such surety or sureties, subject to service of process in suits on the bond within the State, District, or Territory in which the warehouse is located, and shall contain such terms and conditions as the Secretary of Agriculture may prescribe to carry out the purposes of this Act, including the requirements of fire insurance. Whenever the Secretary of Agriculture shall determine that a bond approved by him is, or for any cause has become, insufficient, he may require an additional bond or bonds to be given by the warehouseman concerned, conforming with the requirements of this section, and unless the same be given within the time fixed by a written demand therefor the license of such warehouseman may be suspended or revoked. [39 Stat. L. 486.]

See the note to section 1 of this Act, *supra*, p. 909.

SEC. 7. [Suit on bond.] That any person injured by the breach of any obligation to secure which a bond is given, under the provisions of sections six or nine, shall be entitled to sue on the bond in his own name in any court of competent jurisdiction to recover the damages he may have sustained by such breach. [39 Stat. L. 487.]

See the note to section 1 of this Act, *supra*, p. 909.

SEC. 8. [Designation of warehouse as bonded.] That upon the filing with and approval by the Secretary of Agriculture of a bond, in compliance with this Act, for the conduct of a warehouse, such warehouse shall be designated as bonded hereunder; but no warehouse shall be designated as bonded under this Act, and no name or description conveying the impression that it is so bonded, shall be used, until a bond, such as provided for in section six, has been filed with and approved by the Secretary of Agriculture, nor unless the license issued under this Act for the conduct of such warehouse remains unsuspended and unrevoked. [39 Stat. L. 487.]

See the note to section 1 of this Act, *supra*, p. 909.

SEC. 9. [Licenses to persons not warehousemen — receipts for agricultural products.] That the Secretary of Agriculture may, under such rules and regulations as he shall prescribe, issue a license to any person not a warehouseman to accept the custody of agricultural products and to store the same in a warehouse or warehouses owned, operated, or leased by any State, upon condition that such person agree to comply with and abide by the terms of this Act and the rules and regulations prescribed hereunder. Each person so licensed shall issue receipts for the agricultural products placed in his custody, and shall give bond, in accordance with the provisions of this Act and the rules and regulations hereunder affecting warehousemen licensed under this Act, and shall otherwise be subject to this Act and such rules and regulations to the same extent as is provided for warehousemen licensed hereunder. [39 Stat. L. 487.]

See the note to section 1 of this Act, *supra*, p. 909.

SEC. 10. [Fees.] That the Secretary of Agriculture shall charge, assess, and cause to be collected a reasonable fee for every examination or inspection of a warehouse under this Act when such examination or inspection is made upon application of a warehouseman, and a fee not exceeding \$2 per annum for each license or renewal thereof issued to a warehouseman under this Act. All such fees shall be deposited and covered into the Treasury as miscellaneous receipts. [39 Stat. L. 487.]

See the note to section 1 of this Act, *supra*, p. 909.

SEC. 11. [Licenses to classify or weigh agricultural products.] That the Secretary of Agriculture may, upon presentation of satisfactory proof of competency, issue to any person a license to classify any agricultural product or products, stored or to be stored in a warehouse licensed under this Act, according to grade or otherwise and to certificate the grade or other class thereof, or to weigh the same and certificate the weight thereof, or both to classify and weigh the same and to certificate the grade or other class and the weight thereof, upon condition that such person agree to comply with and abide by the terms of this Act and of the rules and regulations prescribed hereunder so far as the same relate to him. [39 Stat. L. 487.]

See the note to section 1 of this Act, *supra*, p. 909.

SEC. 12. [Suspension or revocation of license.] That any license issued to any person to classify or to weigh any agricultural product or products under this Act may be suspended or revoked by the Secretary of Agriculture whenever he is satisfied, after opportunity afforded to the licensee concerned for a hearing, that such licensee has failed to classify or to weigh any agricultural product or products correctly, or has violated any of the provisions of this Act or of the rules and regulations prescribed hereunder, so far as the same may relate to him, or that he has used his license or allowed it to be used for any improper purpose whatsoever. Pending investigation, the Secretary of Agriculture, whenever he deems

necessary, may suspend a license temporarily without hearing. [39 Stat. L. 487.]

See the note to section 1 of this Act, *supra*, p. 909.

SEC. 13. [Duty of licensed warehouseman to receive agricultural products.] That every warehouseman conducting a warehouse licensed under this Act shall receive for storage therein, so far as its capacity permits, any agricultural product of the kind customarily stored therein by him which may be tendered to him in a suitable condition for warehousing, in the usual manner in the ordinary and usual course of business, without making any discrimination between persons desiring to avail themselves of warehouse facilities. [39 Stat. L. 488.]

See the note to section 1 of this Act, *supra*, p. 909.

SEC. 14. [Deposits subject to what terms and rules.] That any person who deposits agricultural products for storage in a warehouse licensed under this Act shall be deemed to have deposited the same subject to the terms of this Act and the rules and regulations prescribed hereunder. [39 Stat. L. 488.]

See the note to section 1 of this Act, *supra*, p. 909.

SEC. 15. [Inspection and grading of stored products by licensed person.] That grain, flaxseed, or any other fungible agricultural product stored for interstate or foreign commerce, or in any place under the exclusive jurisdiction of the United States, in a warehouse licensed under this Act shall be inspected and graded by a person duly licensed to grade the same under this Act. [39 Stat. L. 488.]

See the note to section 1 of this Act, *supra*, p. 909.

SEC. 16. [Authority of warehouseman to mingle deposits.] That every warehouseman conducting a warehouse licensed under this Act shall keep the agricultural products therein of one depositor so far separate from agricultural products of other depositors, and from other agricultural products of the same depositor for which a separate receipt has been issued, as to permit at all times the identification and redelivery of the agricultural products deposited; but if authorized by agreement or by custom, a warehouseman may mingle fungible agricultural products with other agricultural products of the same kind and grade, and shall be severally liable to each depositor for the care and redelivery of his share of such mass, to the same extent and under the same circumstances as if the agricultural products had been kept separate, but he shall at no time while they are in his custody mix fungible agricultural products of different grades. [39 Stat. L. 488.]

See the note to section 1 of this Act, *supra*, p. 909.

SEC. 17. [Receipts — issuance by warehouseman.] That for all agricultural products stored for interstate or foreign commerce, or in any place under the exclusive jurisdiction of the United States, in a warehouse

licensed under this Act original receipts shall be issued by the warehouseman conducting the same, but no receipts shall be issued except for agricultural products actually stored in the warehouse at the time of the issuance thereof. [39 Stat. L. 488.]

See the note to section 1 of this Act, *supra*, p. 909.

SEC. 18. [Contents of receipt.] That every receipt issued for agricultural products stored in a warehouse licensed under this Act shall embody within its written or printed terms (a) the location of the warehouse in which the agricultural products are stored; (b) the date of issue of the receipt; (c) the consecutive number of the receipt; (d) a statement whether the agricultural products received will be delivered to the bearer, to a specified person, or to a specified person or his order; (e) the rate of storage charges; (f) a description of the agricultural products received, showing the quantity thereof, or, in case of agricultural products customarily put up in bales or packages, a description of such bales or packages by marks, numbers, or other means of identification and the weight of such bales or packages; (g) the grade or other class of the agricultural products received and the standard or description in accordance with which such classification has been made: *Provided*, That such grade or other class shall be stated according to the official standard of the United States applicable to such agricultural products as the same may be fixed and promulgated under authority of law: *Provided further*, That until such official standards of the United States for any agricultural product or products have been fixed and promulgated, the grade or other class thereof may be stated in accordance with any recognized standard or in accordance with such rules and regulations not inconsistent herewith as may be prescribed by the Secretary of Agriculture; (h) a statement that the receipt is issued subject to the United States warehouse Act and the rules and regulations prescribed thereunder; (i) if the receipt be issued for agricultural products of which the warehouseman is owner, either solely or jointly or in common with others, the fact of such ownership; (j) a statement of the amount of advances made and of liabilities incurred for which the warehouseman claims a lien: *Provided*, That if the precise amount of such advances made or of such liabilities incurred be at the time of the issue of the receipt unknown to the warehouseman or his agent who issues it, a statement of the fact that advances have been made or liabilities incurred and the purpose thereof shall be sufficient; (k) such other terms and conditions within the limitations of this Act as may be required by the Secretary of Agriculture; and (l) the signature of the warehouseman, which may be made by his authorized agent: *Provided*, That unless otherwise required by law of the State in which the warehouse is located, when requested by the depositor of other than fungible agricultural products, a receipt omitting compliance with subdivision (g) of this section may be issued if it have plainly and conspicuously embodied in its written or printed terms a provision that such receipt is not negotiable. [39 Stat. L. 488.]

See the note to section 1 of this Act, *supra*, p. 909.

SEC. 19. [Standards for agricultural products — establishment by Secretary of Agriculture.] That the Secretary of Agriculture is authorized, from time to time, to establish and promulgate standards for agricultural products in this Act defined by which their quality or value may be judged or determined: *Provided*, That the standards for any agricultural products which have been, or which in future may be, established by or under authority of any other Act of Congress shall be, and are hereby, adopted for the purposes of this Act as the official standards of the United States for the agricultural products to which they relate. [39 Stat. L. 489.]

See the note to section 1 of this Act, *supra*, p. 909.

The Secretary of Agriculture was authorized to establish standard grades of cotton by the Act of May 23, 1908, ch. 192, § 1, given in 1909 Supp. Fed. Stat. Ann. 6; 1 Fed. Stat. Ann. (2d ed.) 239.

SEC. 20. [Effect of uncanceled original receipt — new receipt.] That while an original receipt issued under this Act is outstanding and uncanceled by the warehouseman issuing the same no other or further receipt shall be issued for the agricultural product covered thereby or for any part thereof, except that in the case of a lost or destroyed receipt a new receipt, upon the same terms and subject to the same conditions and bearing on its face the number and date of the receipt in lieu of which it is issued, may be issued upon compliance with the statutes of the United States applicable thereto in places under the exclusive jurisdiction of the United States or upon compliance with the laws of any State applicable thereto in any place not under the exclusive jurisdiction of the United States: *Provided*, That if there be in such case no statute of the United States or law of a State applicable thereto such new receipts may be issued upon the giving of satisfactory security in compliance with the rules and regulations made pursuant to this Act. [39 Stat. L. 489.]

See the note to section 1 of this Act, *supra*, p. 909.

SEC. 21. [Delivery of stored products.] That a warehouseman conducting a warehouse licensed under this Act, in the absence of some lawful excuse, shall, without unnecessary delay, deliver the agricultural products stored therein upon a demand made either by the holder of a receipt for such agricultural products or by the depositor thereof if such demand be accompanied with (a) an offer to satisfy the warehouseman's lien; (b) an offer to surrender the receipt, if negotiable, with such indorsements as would be necessary for the negotiation of the receipt; and (c) a readiness and willingness to sign, when the products are delivered, an acknowledgment that they have been delivered if such signature is requested by the warehouseman. [39 Stat. L. 489.]

See the note to section 1 of this Act, *supra*, p. 909.

SEC. 22. [Cancelling receipts.] That a warehouseman conducting a warehouse licensed under this Act shall plainly cancel upon the face thereof each receipt returned to him upon the delivery by him of the agricultural products for which the receipt was issued. [39 Stat. L. 490.]

See the note to section 1 of this Act, *supra*, p. 909.

SEC. 23. [Records and reports by warehousemen.] That every warehouseman conducting a warehouse licensed under this Act shall keep in a

place of safety complete and correct records of all agricultural products stored therein and withdrawn therefrom, of all warehouse receipts issued by him, and of the receipts returned to and cancelled by him, shall make reports to the Secretary of Agriculture concerning such warehouse and the condition, contents, operation, and business thereof in such form and at such times as he may require, and shall conduct said warehouse in all other respects in compliance with this Act and the rules and regulations made hereunder. [39 Stat. L. 490.]

See the note to section 1 of this Act, *supra*, p. 909.

SEC. 24. [Examination of stored agricultural product — findings — publication.] That the Secretary of Agriculture is authorized to cause examinations to be made of any agricultural product stored in any warehouse licensed under this Act. Whenever, after opportunity for hearing is given to the warehouseman conducting such warehouse, it is determined that he is not performing fully the duties imposed on him by this Act and the rules and regulations made hereunder, the Secretary may publish his findings. [39 Stat. L. 490.]

See the note to section 1 of this Act, *supra*, p. 909.

SEC. 25. [Suspension or revocation of license.] That the Secretary of Agriculture may, after opportunity for hearing has been afforded to the licensee concerned, suspend or revoke any license issued to any warehouseman conducting a warehouse under this Act, for any violation of or failure to comply with any provision of this Act or of the rules and regulations made hereunder or upon the ground that unreasonable or exorbitant charges have been made for services rendered. Pending investigation, the Secretary of Agriculture, whenever he deems necessary, may suspend a license temporarily without hearing. [39 Stat. L. 490.]

See the note to section 1 of this Act, *supra*, p. 909.

SEC. 26. [Publication of results of investigations, names and addresses of licensees, etc.] That the Secretary of Agriculture from time to time may publish the results of any investigations made under section three of this Act; and he shall publish the names and locations of warehouses licensed and bonded and the names and addresses of persons licensed under this Act and lists of all licenses terminated under this Act and the causes therefor. [39 Stat. L. 490.]

See the note to section 1 of this Act, *supra*, p. 909.

SEC. 27. [Examination of books, records, etc.] That the Secretary of Agriculture is authorized through officials, employees, or agents of the Department of Agriculture designated by him to examine all books, records, papers, and accounts of warehouses licensed under this Act and of the warehousemen conducting such warehouses relating thereto. [39 Stat. L. 490.]

See the note to section 1 of this Act, *supra*, p. 909.

SEC. 28. [Rules and regulations.] That the Secretary of Agriculture shall from time to time make such rules and regulations as he may deem necessary for the efficient execution of the provisions of this Act. [39 Stat. L. 490.]

See the note to section 1 of this Act, *supra*, p. 909.

SEC. 29. [Impairment of laws of other states and United States.] That nothing in this Act shall be construed to conflict with, or to authorize any conflict with, or in any way to impair or limit the effect or operation of the laws of any State relating to warehouses, warehousemen, weighers, graders, or classifiers; but the Secretary of Agriculture is authorized to cooperate with such officials as are charged with the enforcement of such State laws in such States and through such cooperation to secure the enforcement of the provisions of this Act; nor shall this Act be construed so as to limit the operation of any statute of the United States relating to warehouses or warehousemen, weighers, graders, or classifiers now in force in the District of Columbia or in any Territory or other place under the exclusive jurisdiction of the United States. [39 Stat. L. 490.]

See the note to section 1 of this Act, *supra*, p. 909.

SEC. 30. [Forgery, etc., of licenses and receipts.] That every person who shall forge, alter, counterfeit, simulate, or falsely represent, or shall without proper authority use, any license issued by the Secretary of Agriculture under this Act, or who shall violate or fail to comply with any provision of section eight of this Act, or who shall issue or utter a false or fraudulent receipt or certificate, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not more than \$500 or imprisoned not more than six months, or both, in the discretion of the court. [39 Stat. L. 490.]

See the note to section 1 of this Act, *supra*, p. 909.

SEC. 31. [Appropriation.] That there is hereby appropriated, out of any money in the Treasury not otherwise appropriated, the sum of \$50,000, available until expended, for the expenses of carrying into effect the provisions of this Act, including the payment of such rent and the employment of such persons and means as the Secretary of Agriculture may deem necessary in the city of Washington and elsewhere, and he is authorized, in his discretion, to employ qualified persons not regularly in the service of the United States for temporary assistance in carrying out the purposes of this Act, and out of the moneys appropriated by this Act to pay the salaries and expenses thereof. [39 Stat. L. 491.]

See the note to section 1 of this Act, *supra*, p. 909.

SEC. 32. [Effect of invalidity of part of Act.] That if any clause, sentence, paragraph, or part of this Act shall, for any reason, be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, or part thereof directly involved in the controversy in which such judgment shall have been rendered. [39 Stat. L. 491.]

See the note to section 1 of this Act, *supra*, p. 909.

SEC. 33. [Right to amend, etc.] That the right to amend, alter, or repeal this Act is hereby expressly reserved. [39 Stat. L. 491.]

See the note to section 1 of this Act, *supra*, p. 909.

WATERS

Act of July 26, 1916, ch. 257, 918.

Reclamation Act Amended — Acceptance of Extension of Times of Payment by Present Owners — Notice — Payment of Installments, 918.

Act of Aug. 11, 1916, ch. 319, 919.

Sec. 1. Arid Public Lands — Reclamation — Irrigation, 919.

2. Apportionment of Cost of Irrigation Canals, etc. — Liens, 919.

3. Liens — Taxes and Assessments, 920.

4. Approval of District Map or Plat, 921.

5. Sale for Taxes and Assessments, 921.

6. Patents — Subrogation to Rights of Purchaser — Relinquishment of Entered Land, 921.

7. Notices — Hearing by Petition, etc. — Redemption, 922.

8. Money Received from Sale of Public Lands — Disposition, 922.

Act of Feb. 15, 1917, ch. 71, 923.

Irrigation Act — Patents to Homesteaders — Water-right Certificates — Payment — Former Act Amended, 923.

Act of June 12, 1917, ch. 27, 923.

Sec. 1. Reclamation — Reimbursements of Moneys Advanced — Application of Moneys Refunded, etc. — Former Act Amended, 923.

Act of Aug. 10, 1917, ch. 52, 923.

Sec. 11. "Reclamation Act" — Suspension of Provision Relating to Residence, 923.

Act of July 1, 1918, ch. —, 924.

Reclamation Service — Purchase of Supplies — Procurement of Services — Open Market, 924.

An Act To amend section fourteen of the reclamation extension Act approved August thirteenth, nineteen hundred and fourteen.

[*Act of July 26, 1916, ch. 257, 39 Stat. L. 390.*]

[**Reclamation Act amended — acceptance of extension of times of payment by present owners — notice — payment of installments.**] That section fourteen of an Act entitled "An Act extending the period of payment under reclamation projects, and for other purposes," approved August thirteenth, nineteen hundred and fourteen, be amended so as to read as follows:

"SEC. 14. That any person whose land or entry has heretofore become subject to the reclamation law, who desires to secure the benefits of the extension of the period of payments provided by this Act, shall, within six months after the issuance of the first public notice hereunder affecting his land or entry, notify the Secretary of the Interior, in the manner to be prescribed by said Secretary, of his acceptance of all the terms and conditions of this Act, and thereafter his lands or entry shall be subject to all of the provisions of this Act: *Provided*, That upon sufficient showing the Secretary of the Interior may, in his discretion, permit notice of acceptance of all the terms and conditions of this Act to be filed at any time after the time limit hereinbefore fixed for filing such acceptance shall have expired, conditioned, however, that where the applicant for such acceptance is in arrears

on construction charges, he shall at the time of acceptance pay such installments of the construction charge as he would have been required to pay had he accepted this Act within the time limit hereinabove fixed, plus the penalties that would have accrued had he so accepted, and such applicant shall thereafter be upon the same status that he would have been had he accepted the provisions of this Act within the time limit hereinabove fixed, and thereafter the lands or entry of any such persons so filing such notice of acceptance shall be subject to all the provisions of this Act." [39 Stat. L. 390.]

For the Act of Aug. 13, 1914, ch. 247, § 14, amended by this Act, see 1916 Supp. Fed. Stat. Ann. 315; 9 Fed. Stat. Ann. (2d ed.) 1389.

An Act To promote the reclamation of arid lands.

[Act of August 11, 1916, ch. 319, 39 Stat. L. 506.]

[SEC. 1.] **[Arid public lands — reclamation — irrigation.]** That when in any State of the United States under the irrigation district laws of said State there has heretofore been organized and created or shall hereafter be organized and created any irrigation district for the purpose of irrigating the lands situated within said irrigation district, and in which irrigation district so created or to be created there shall be included any of the public lands of the United States, such public lands so situated in said irrigation district, when subject to entry, and entered lands within said irrigation district, for which no final certificates have been issued, which may be designated by the Secretary of the Interior in the approval by him of the map and plat of an irrigation district as provided in section three, are hereby made and declared to be subject to all the provisions of the laws of the State in which such lands shall be situated relating to the organization, government and regulation of irrigation districts for the reclamation and irrigation of arid lands for agricultural purposes, to the same extent and in the same manner in which the lands of a like character held under private ownership are or may be subject to said laws: *Provided*, That the United States and all persons legally holding unpatented lands under entry made under the public land laws of the United States are accorded all the rights, privileges, benefits, and exemptions given by said State laws to persons holding lands of a like character under private ownership, except as hereinafter otherwise provided: *Provided further*, That this Act shall not apply to any irrigation district comprising a majority acreage of unentered land. [39 Stat. L. 506.]

SEC. 2. **[Apportionment of cost of irrigation canals, etc.— liens.]** That the cost of constructing, acquiring, purchasing, or maintaining the canals, ditches, reservoirs, reservoir sites, water, water right, rights of way, or other property incurred in connection with any irrigation project under said irrigation district laws shall be equitably apportioned among lands held under private ownership, lands legally covered by unpatented entries, and unentered public lands included in said irrigation district. Officially certified lists of the amounts of charges assessed against the smallest legal subdivision of said lands shall be furnished to the register and receiver of

the land district within which the lands affected are located as soon as such charges are assessed; but nothing in this Act shall be construed as creating any obligation against the United States to pay any of said charges, assessments, or debts incurred.

That all charges legally assessed shall be a lien upon unentered lands and upon lands covered by unpatented entries included in said irrigation district; and said lien upon said land covered by unpatented entries may be enforced upon said unpatented lands by the sale thereof in the same manner and under the same proceeding whereby said assessments are enforced against lands held under private ownership: *Provided*, That in the case of entered unpatented lands the title or interest which such irrigation district may convey by tax sale, tax deed, or as a result of any tax proceeding shall be subject to the following conditions and limitations: If such unpatented land be withdrawn under the Act of Congress of June seventeenth, nineteen hundred and two (Thirty-second Statutes, page three hundred and eighty-eight), known as the reclamation Act, or subject to the provisions of said Act, then the interest which the district may convey by such tax proceedings or tax deed shall be subject to a prior lien reserved to the United States for all the unpaid charges authorized by the said Act of June seventeenth, nineteen hundred and two, but the holder of such tax deed or tax title resulting from such district tax shall be entitled to all the rights and privileges in the land included in such tax title or tax deed of an assignee under the provisions of the Act of Congress of June twenty-third, nineteen hundred and ten (Thirty-sixth Statutes, page five hundred and ninety-two), and upon submission to the United States land office of the district in which the land is located of satisfactory proof of such tax title, the name of the holder thereof shall be indorsed upon the records of such land office as entitled to the rights of one holding a complete and valid assignment under the said Act of June twenty-third, nineteen hundred and ten, and such person may at any time thereafter receive patent upon submitting satisfactory proof of the reclamation and irrigation required by the said Act of Congress of June seventeenth, nineteen hundred and two, and Acts amendatory thereto, and making the payments required by said Acts. [39 Stat. L. 507.]

For the Act of June 17, 1902, ch. 1093, mentioned in the text, see 7 Fed. Stat. Ann. 1098; 9 Fed. Stat. Ann. (2d ed.) 1363.

For the Act of June 23, 1910, ch. 357, mentioned in the text, see 1912 Supp. Fed. Stat. Ann. 319; 9 Fed. Stat. Ann. (2d ed.) 1376.

SEC. 3. [Liens — taxes and assessments.] That no unentered lands and no entered lands for which no final certificates have been issued shall be subject to the lien or liens herein contemplated until there shall have been submitted by said irrigation district to the Secretary of the Interior, and approved by him, a map or plat of said district and sufficient detailed engineering data to demonstrate to the satisfaction of the Secretary of the Interior the sufficiency of the water supply and the feasibility of the project, and which shall explain the plan or mode of irrigation in those irrigation districts where the irrigation works have not been constructed, and which plan shall be sufficient to thoroughly irrigate and reclaim said land and prepare it to raise ordinary agricultural crops, and which shall also show the source of water to be used for irrigation of land included in said

district: *Provided*, That the Secretary of the Interior may, upon the expiration of ten years from the date of his approval of said map and plan of any irrigation district, release from the lien authorized by this Act any unentered land or lands upon which final certificate has not issued, for which irrigation works have not been constructed and water of such district made available for the land: *Provided further*, That in those irrigation districts already organized and whose irrigation works have been constructed and are in operation as soon as a satisfactory map, plat, and plan shall have been approved by the Secretary of the Interior, as in this Act provided, such entered and unentered lands shall be subject to all district taxes and assessments theretofore actually levied against the lands in said district and in the same manner in which lands of a like character held under private ownership are subject to liens and assessments. [39 Stat. L. 507.]

SEC. 4. [Approval of district map or plat.] That upon the approval of the district map or plat as hereinbefore provided by the Secretary of the Interior the register and receiver will note said approval upon their records where any unentered or entered and unpatented lands are affected. [39 Stat. L. 508.]

SEC. 5. [Sale for taxes and assessments.] That no public lands which were unentered at the time any tax or assessment was levied against same by such irrigation district shall be sold for such taxes or assessments, but such tax or assessment shall be and continue a lien upon such lands, and not more than one hundred and sixty acres of such land shall be entered by any one person; and when such lands shall be applied for, after said approval by the Secretary of the Interior, under the homestead or desert-land laws of the United States the application shall be suspended for a period of thirty days to enable the applicant to present a certificate from the proper district or county officer showing that no unpaid district charges are due and delinquent against said land. [39 Stat. L. 508.]

SEC. 6. [Patents — subrogation to rights of purchaser — relinquishment of entered land.] That any entered but unpatented lands not subject to the reclamation Act of June seventeenth, nineteen hundred and two (Thirty-second Statutes, page three hundred and eighty-eight), sold in the manner and for the purposes mentioned in this Act may be patented to the purchaser thereof or his assignee at any time after the expiration of the period of redemption allowed by law under which it may have been sold (no redemption having been made) upon the payment to the receiver of the local land office of the minimum price of \$1.25 per acre, or such other price as may be fixed by law for such lands, together with the usual fees and commissions charged in entries of like lands under the homestead laws, and upon a satisfactory showing that the irrigation works have been constructed and that water of the district is available for such land; but the purchaser or his assignee shall, at the time of application for patent, have the qualification of a homestead entryman or desert-land entryman, and not more than one hundred and sixty acres of said land shall be patented to any one purchaser under the provisions of this Act.

These limitations shall not apply to sales to irrigation districts, but shall apply to purchasers from such irrigation districts of such lands bid in by said district.

That unless the purchaser or his assignee of such lands shall, within ninety days after the time for redemption has expired, pay to the proper receiver all fees and commissions and the purchase price to which the United States shall be entitled as provided for in this Act, any person having the qualification of a homestead entryman or a desert-land entryman may pay to the proper receiver, for not more than one hundred and sixty acres of said lands, for which payment has not been made, the unpaid purchase price, fees, and commissions to which the United States may be entitled; and upon satisfactory proof that he has paid to the purchaser at the tax sale, or his assignee or to the proper officer of the district for such purchaser or for the district, as the case may be, the sum for which the land was sold at sale for irrigation district charges or bid in by the district at such sale, and in addition thereto the interest and penalties on the amount bid at the rate allowed by law, shall be subrogated to the rights of such purchaser to receive patent for said land.

In any case where any tract of entered land lying within such approved irrigation district shall become vacant by relinquishment or cancellation for any cause, any subsequent applicant therefor shall be required, in addition to the qualifications and requirements otherwise provided, to furnish satisfactory proof by certificate from the proper district or county officer that he has paid all charges then due to the district upon said land and also has paid to the proper district or county officer for the holder or holders of any tax certificates, delinquency certificates, or other proper evidence of purchase at tax sale the amount for which the said land was sold at tax sale, together with the interest and penalties thereon provided by law. [39 Stat. L. 508.]

For the Reclamation Act of June 17, 1902, ch. 1093, mentioned in the text, see 7 Fed. Stat. Ann. 1098; 9 Fed. Stat. Ann. (2d ed.) 1363.

SEC. 7. [Notices — hearing by petition, etc. — redemption.] That all notices required by the irrigation district laws mentioned in this act shall, as soon as such notices are issued, be delivered to the register and receiver of the proper land office in cases where unpatented lands are affected thereby, and to the entryman whose unpatented lands are included therein, and the United States and such entryman shall be given the same rights to be heard by petition, answer, remonstrance, appeal, or otherwise as are given to persons holding lands in private ownership, and all entrymen shall be given the same rights of redemption as are given to the owners of lands held in private ownership. [39 Stat. L. 509.]

SEC. 8. [Money received from sale of public lands — disposition.] That all moneys derived by the United States from the sale of public lands herein referred to shall be paid into such funds and applied as provided by law for the disposal of the proceeds from the sale of public lands. [39 Stat. L. 509.]

An Act To amend section one of the Act of August ninth, nineteen hundred and twelve, providing for patents on reclamation entries, and for other purposes.

[*Act of Feb. 15, 1917, ch. 71, 39 Stat. L. 920.*]

[Irrigation Act — patents to homesteaders — water-right certificates — payment — former Act amended.] That the proviso to section one of the Act of August ninth, nineteen hundred and twelve (Thirty-seventh Statutes, page two hundred and sixty-five), entitled "An Act providing for patents on reclamation entries, and for other purposes," be amended to read as follows:

"*Provided*, That no such patent or final water-right certificate shall issue until after the payment of all sums due the United States on account of such land or water right at the time of the submission of proof entitling the homestead or desert-land entryman to such patent or the purchaser to such final water-right certificate." [39 Stat. L. 920.]

For the Act of Aug. 9, 1912, ch. 278, § 1, amended by the text, see 1914 Supp. Fed. Stat. Ann. 421; 9 Fed. Stat. Ann. (2d ed.) 1383.

[SEC. 1.] [Reclamation — reimbursements of moneys advanced — application of moneys refunded, etc.— former Act amended.] * * *

The Act of June twenty-fifth, nineteen hundred and ten (Thirty-sixth Statutes, page eight hundred and thirty-five), is amended to provide that reimbursement of the moneys advanced under the provisions of that Act shall be made by transferring annually the sum of \$1,000,000 from the reclamation fund to the general funds in the Treasury, beginning July first, nineteen hundred and twenty, and continuing until full reimbursement has been made;

All moneys heretofore or hereafter refunded or received in connection with operations under the reclamation law, except repayments of construction and operation and maintenance charges, shall be a credit to the appropriation for the project or operation from or on account of which the collection is made and shall be available for expenditure in like manner as if said sum had been specifically appropriated for said project or operation. [40 Stat. L. 149.]

This is from the Sundry Civil Appropriation Act of June 12, 1917, ch. 27.

For the Act of June 25, 1910, ch. 407, amended by the text, see 1912 Supp. Fed. Stat. Ann. 414; 9 Fed. Stat. Ann. (2d ed.) 1377.

SEC. 11. ["Reclamation Act" — suspension of provision relating to residence.] That the Secretary of the Interior is hereby authorized, in his discretion, to suspend during the continuance of this Act that provision of the Act known as the "Reclamation Act" requiring residence upon

lands in private ownership or within the neighborhood for securing water for the irrigation of the same, and he is authorized to permit the use of available water thereon upon such terms and conditions as he may deem proper. [40 Stat. L. 276.]

The foregoing section 11 is from an Act of Aug. 10, 1917, ch. 52, entitled "An Act to provide further for the national security and defense by stimulating agriculture and facilitating the distribution of agricultural products." The entire Act is set out as referred to in AGRICULTURE, *ante*, p. 44, and section 12 there given determines how long the Act is to remain effective and should be read in connection with this section.

For the Reclamation Act of June 17, 1902, ch. 1093, mentioned in the text, see 7 Fed. Stat. Ann. 1098; 9 Fed. Stat. Ann. (2d ed.) 1363.

[SEC. 1.] [Reclamation Service — purchase of supplies — procurement of services — open market.] * * * Hereafter the purchase of supplies and the procurement of services for the Reclamation Service may be made in open market in the manner common among business men, without advertising and formal contract, when the aggregate of the amount required does not exceed \$50, and when, in the opinion of the Director of the Reclamation Service, such limitations of amount are not designed to evade the purchase of supplies and the procurement of services under advertising and formal contract, and equally or more advantageous terms can thereby be secured. [— Stat. L. —.]

This is from the Sundry Civil Appropriation Act of July 1, 1918, ch. —.

WATERWAYS COMMISSION

See RIVERS, HARBORS, AND CANALS.

WEATHER

Act of March 4, 1917, ch. 179, 924.

Weather Bureau — Printing, 924.

[Weather Bureau — printing.] * * * That no printing shall be done by the Weather Bureau, that in the judgment of the Secretary of Agriculture, can be done at the Government Printing Office without impairing the service of said bureau. [39 Stat. L. 1137.]

This is from the Agricultural Appropriation Act of March 4, 1917, ch. 179.

An identical provision appeared in the like Act of Aug. 11, 1916, ch. 313, § 1, 39 Stat. L. 448.

WEIGHTS AND MEASURES

Act of Aug. 23, 1916, ch. 396, 925.

Sec. 1. Lime Barrels — Standardization, 925.

2. Marking, 925.

3. Sales in Fractional Parts of Standard Barrel, 925.

4. Enforcement of Act — Rules and Regulations, 925.

5. Failure to Mark Barrels or Containers — Penalty, 926.

6. Duty of District Attorney, 926.

7. Act When Effective, 926.

CROSS-REFERENCE

See *AGRICULTURE*.

An Act To standardize lime barrels.

[Act of Aug. 23, 1916, ch. 396, 39 Stat. L. 530.]

[SEC. 1.] [**Lime barrels — standardization.**] That there is hereby established a large and a small barrel of lime, the large barrel to consist of two hundred and eighty pounds and the small barrel to consist of one hundred and eighty pounds, net weight. *[39 Stat. L. 530.]*

SEC. 2. [**Marking.**] That it shall be unlawful for any person to sell or offer for sale lime imported in barrels from a foreign country, or to sell or offer for sale lime in barrels for shipment from any State or Territory or the District of Columbia, to any other State or Territory or the District of Columbia, unless there shall be stenciled or otherwise clearly marked on one or both heads of the small barrel the figures " 180 lbs. net " and of the large barrel the figures " 280 lbs. net " before the importation or shipment, and on either barrel in addition the name of the manufacturer of the lime and where manufactured, and, if imported, the name of the country from which it is imported. *[39 Stat. L. 530.]*

SEC. 3. [**Sales in fractional parts of standard barrel.**] When lime is sold in interstate or foreign commerce in containers of less capacity than the standard small barrel, it shall be sold in fractional parts of said standard small barrel, and the net weight of lime contained in such container shall by stencil or otherwise be clearly marked thereon, together with the name of the manufacturer thereof, and the name of the brand, if any, under which it is sold, and, if imported, the name of the country from which it is imported. *[39 Stat. L. 530.]*

SEC. 4. [**Enforcement of Act — rules and regulations.**] That rules and regulations for the enforcement of this Act, not inconsistent with the provisions of the Act, shall be made by the Director of the Bureau of Standards and approved by the Secretary of Commerce, and that such rules and regulations shall include reasonable variations or tolerances which may be allowed. *[39 Stat. L. 531.]*

SEC. 5. [Failure to mark barrels or containers — penalty.] That it shall be unlawful to pack, sell, or offer for sale for shipment from any State or Territory or the District of Columbia to any other State or Territory or the District of Columbia, any barrels or other containers of lime which are not marked as provided in sections two and three of this Act, or to sell, charge for, or purport to deliver from any State or Territory or the District of Columbia to any other State or Territory or the District of Columbia, as a large or small barrel or a fractional part of said small barrel of lime, any less weight of lime than is established by the provisions of this Act; and any person guilty of a violation of the provisions of this Act shall be deemed guilty of a misdemeanor and be liable to a fine not exceeding \$100. [39 Stat. L. 531.]

SEC. 6. [Duty of district attorney.] That it shall be the duty of each district attorney, to whom satisfactory evidence of any violation of this Act is presented, to cause appropriate proceedings to be commenced and prosecuted in the United States court having jurisdiction of such offense: *Provided, however,* That the penal provisions of this Act shall not take effect until January first, nineteen hundred and seventeen. [39 Stat. L. 531.]

SEC. 7. [Act when effective.] That this Act shall be in force and effect from and after its passage. [39 Stat. L. 531.]

WEST INDIAN ISLANDS

Act of March 3, 1917, ch. 171, 926.

- Sec. 1. Islands Acquired from Denmark — Temporary Government — Officers — Appointment — Compensation, 926.*
2. Laws Applicable — Courts — Jurisdiction — Appeals, 927.
3. Duties — Internal Revenue Taxes — Goods Coming into United States, 927.
4. Existing Laws Imposing Taxes — Continuance, 928.
5. Disposition of Duties and Taxes Collected, 928.
6. Appropriation for Various Purposes, 928.
7. Purchase Price of Islands — Appropriation — Place of Payment, 928.
8. When Act Becomes Effective, 929.

An Act To provide a temporary government for the West Indian Islands acquired by the United States from Denmark by the convention entered into between said countries on the fourth day of August, nineteen hundred and sixteen, and ratified by the Senate of the United States on the seventh day of September, nineteen hundred and sixteen, and for other purposes.

[Act of March 3, 1917, ch. 171, 39 Stat. L. 1132.]

[SEC. 1.] [Islands acquired from Denmark — temporary government — officers — appointment — compensation.] That, except as hereinafter

provided, all military, civil, and judicial powers necessary to govern the West Indian Islands acquired from Denmark shall be vested in a governor and such person or persons as the President may appoint, and shall be exercised in such manner as the President shall direct until Congress shall provide for the government of said islands: *Provided*, That the President may assign an officer of the Army or Navy to serve as such governor and perform the duties appertaining to said office: *And provided further*, That the governor of the said islands shall be appointed by and with the advice and consent of the Senate: *And provided further*, That the compensation of all persons appointed under this Act shall be fixed by the President.

For the terms of the convention between the United States and Denmark, mentioned in the title of this Act, see 39 Stat. L. 1706.

SEC. 2. [Laws applicable — courts — jurisdiction — appeals.] That until Congress shall otherwise provide, in so far as compatible with the changed sovereignty and not in conflict with the provisions of this Act, the laws regulating elections and the electoral franchise as set forth in the code of laws published at Amalienborg the sixth day of April, nineteen hundred and six, and the other local laws, in force and effect in said islands on the seventeenth day of January, nineteen hundred and seventeen, shall remain in force and effect in said islands, and the same shall be administered by the civil officials and through the local judicial tribunals established in said islands, respectively; and the orders, judgments, and decrees of said judicial tribunals shall be duly enforced. With the approval of the President, or under such rules and regulations as the President may prescribe, any of said laws may be repealed, altered, or amended by the colonial council having jurisdiction. The jurisdiction of the judicial tribunals of said islands shall extend to all judicial proceedings and controversies in said islands to which the United States or any citizen thereof may be a party. In all cases arising in the said West Indian Islands and now reviewable by the courts of Denmark, writs of error and appeals shall be to the Circuit Court of Appeals for the Third Circuit, and, except as provided in sections two hundred and thirty-nine and two hundred and forty of the Judicial Code, the judgments, orders, and decrees of such court shall be final in all such cases. [39 Stat. L. 1132.]

Judicial notice will be taken of the laws in force in the West Indian Islands prior to their acquisition by the United States. Article STATUTES AND STATUTORY CONSTRUCTION, 1 Fed. Stat. Ann. p. xii; 1 Fed. Stat. Ann. (2d ed.) p. 21, § 12.

The Circuit Court of Appeals for the Third Circuit comprises the districts of Pennsylvania, New Jersey, and Delaware. See Judicial Code, § 116, 1912 Supp. Fed. Stat. Ann. 191; 5 Fed. Stat. Ann. (2d ed.) 599.

For Judicial Code, § 239, authorizing the Circuit Court of Appeals to certify questions to the Supreme Court for instruction, see 1912 Supp. Fed. Stat. Ann. 231; 5 Fed. Stat. Ann. (2d ed.) 838.

For Judicial Code, § 240, providing for certiorari from the Supreme Court to the Circuit Court of Appeals in cases otherwise final in the latter court, see 1912 Supp. Fed. Stat. Ann. 232; 5 Fed. Stat. Ann. (2d ed.) 854.

SEC. 3. [Duties — internal revenue taxes — goods coming into United States.] That on and after the passage of this Act there shall be levied, collected, and paid upon all articles coming into the United States or its possessions, from the West Indian Islands ceded to the United States by Denmark, the rates of duty and internal-revenue taxes which are required

to be levied, collected, and paid upon like articles imported from foreign countries: *Provided*, That all articles, the growth or product of, or manufactured in such islands from materials the growth or product of such islands or of the United States, or of both, or which do not contain foreign materials to the value of more than twenty per centum of their total value, upon which no drawback of customs duties has been allowed therein, coming into the United States from such islands shall hereafter be admitted free of duty. [39 Stat. L. 1133.]

SEC. 4. [Existing laws imposing taxes — continuance.] That until Congress shall otherwise provide all laws now imposing taxes in the said West Indian Islands, including the customs laws and regulations, shall, in so far as compatible with the changed sovereignty and not otherwise herein provided, continue in force and effect, except that articles of growth, product, or manufacture of the United States shall be admitted there free of duty: *Provided*, That upon exportation of sugar to any foreign country, or the shipment thereof to the United States or any of its possessions, there shall be levied, collected, and paid thereon an export duty of \$8 per ton of two thousand pounds irrespective of polariscope test, in lieu of any export tax now required by law. [39 Stat. L. 1133.]

SEC. 5. [Disposition of duties and taxes collected.] That the duties and taxes collected in pursuance of this Act shall not be covered into the general fund of the Treasury of the United States, but shall be used and expended for the government and benefit of said islands under such rules and regulations as the President may prescribe. [39 Stat. L. 1133.]

SEC. 6. [Appropriation for various purposes.] That for the purpose of taking over and occupying said islands and of carrying this Act into effect and to meet any deficit in the revenues of the said islands resulting from the provisions of this Act the sum of \$100,000 is hereby appropriated, to be paid out of any moneys in the Treasury not otherwise appropriated, and to be applied under the direction of the President of the United States. [39 Stat. L. 1133.]

SEC. 7. [Purchase price of Islands — appropriation — place of payment.] That the sum of \$25,000,000 is hereby appropriated, out of any moneys in the Treasury not otherwise appropriated, to be paid in the city of Washington to the diplomatic representative or other agent of His Majesty the King of Denmark duly authorized to receive said money, in full consideration of the cession of the Danish West Indian Islands to the United States made by the convention between the United States of America and His Majesty the King of Denmark entered into August fourth, nineteen hundred and sixteen, and ratified by the Senate of the United States on the seventh day of September, nineteen hundred and sixteen. [39 Stat. L. 1133.]

For the terms of the Convention between the United States and Denmark, mentioned in this section, see 39 Stat. L. 1706.

SEC. 8. [**When Act becomes effective.**] That this Act, with the exception of section seven, shall be in force and effect and become operative immediately upon the payment by the United States of said sum of \$25,000,000. The fact and date of such payment shall thereupon be made public by a proclamation issued by the President and published in the said Danish West Indian Islands and in the United States. Section seven shall become immediately effective and the appropriation thereby provided for shall be immediately available. [*39 Stat. L. 1133.*]



SUPPLEMENTAL NOTES



AGRICULTURE

Vol. I, p. 233, sec. 7.

Potato diseases.—In *Daigle v. U. S.*, (C. C. A. 1st Cir. 1916) 237 Fed. 159, 150 C. C. A. 305, the facts showed that the Secretary of Agriculture, by virtue of the authority conferred by this section, prohibited the importation of the common potato from the Dominion of Canada and certain other countries because of the prevalence of potato diseases, and that this potato quarantine was set up as a good ground for the seizure of potatoes which had been imported from Canada to Maine. The libel, however, was held insufficient to make such ground available. The court said: "If it had been alleged in the libel that the goods in question had been knowingly brought into the United States contrary to law, in that their importation was prohibited under the Plant Quarantine Act and the order of the Secretary of Agriculture, there would be little doubt but that the potatoes, together with the other property used in bringing them into the country, would be subject to seizure and condemnation . . . but none of the counts of the libel contain such allegations."

Vol. I, p. 234, sec. 8.

"Plant product" as including lumber.—In *Boston, etc., R. Co. v. U. S.*, (C. C. A. 1st Cir. 1917) 246 Fed. 440, 158 C. C. A.

504, it was held that the words "plant product" did not include lumber.

Vol. I, p. 235, sec. 10.

Necessity that information be sworn to.—Where no warrant of arrest is asked for the information need not be sworn to. *U. S. v. Adams Express Co.*, (D. C. Mass. 1915) 230 Fed. 531.

Sufficiency of information.—In *U. S. v. Adams Express Co.*, (D. C. Mass. 1915) 230 Fed. 531, the information was brought under section 8 of this Act, which authorized the Secretary of Agriculture to establish, by regulations to be made by him from time to time, quarantine boundaries against dangerous plant diseases and insect pests, and forbid common carriers to receive for transportation goods covered by such regulations unless such goods had been inspected and the package containing them was certified by the proper officers. The information alleged that the defendant did receive for such transportation nursery stock which had not been inspected and which bore no certificate as required by the Act, and that the defendant knew that the box which it received for transportation, and which bore no certificate, contained nursery stock. The information was demurred to and there was also a motion to quash. The demurrer was sustained.

ALASKA

Vol. I, p. 255, sec. 9.

Purpose of exemption clause.—In the second proviso of this section Congress reserved to itself the exclusive power for five years from the date of its enactment to fix and impose any and all taxes upon railways and railroad property in Alaska. In all of its legislation with respect to Alaska, Congress was dealing with a section of the country the development of which is necessarily attended with hard conditions. Its long winter climate, and the smallness of its population, necessarily make the building of railroads a costly and difficult matter, which fact no doubt entered into the consideration of the law makers in enacting the exemption clause in this section. *Alaska Northern R. Co.*

v. Municipality of Seward, (C. C. A. 9th Cir. 1916) 229 Fed. 667, 144 C. C. A. 77.

Power of municipality to levy tax on railway.—Authorizing, as Congress did, the legislature to levy taxes for territorial purposes up to 1 per centum upon the assessed valuation of property situated within the territory in any one year, and authorizing any incorporated town or municipality thereof to levy any tax for any purpose up to 2 per centum of the assessed valuation of property within the town in any one year, Congress expressly declared that it reserved to itself the exclusive power for five years to fix and impose any tax upon railways or railway property in Alaska. The necessary effect of this reservation is to pro-

hibit the levy of any tax upon such property during the specified period by any other power.—*Alaska Northern R. Co. v. Municipality of Seward*, (C. C. A. 9th Cir. 1916) 229 Fed. 667, 144 C. C. A. 77.

Vol. I, p. 301, sec. 1.

Validity of location.—This statute contemplates as a basis of a valid location the opening and development of a producing mine of coal. Work performed upon a claim merely for prospecting purposes does not fulfil the requirement. *U. S. v. Lane*, (1917) 46 App. Cas. (D. C.) 443.

Vol. I, p. 310, sec. 2.

Time of recording power of attorney.—A power of attorney, authorizing the location of placer mining claims by one for another must be recorded before any step in the matter of such location can be taken. *Sutherland v. Purdy*, (C. C. A. 9th Cir. 1916) 234 Fed. 600, 148 C. C. A. 366, *overruling dicta* on this point in *Cloninger v. Finlaison*, (C. C. A. 9th Cir. 1916) 230 Fed. 98, 144 C. C. A. 396.

Vol. I, p. 319, sec. 15.

Reservation of adjacent waters.—The reservation by presidential proclamation of the waters surrounding Annette Island for the use and benefit of the natives is in accord with the practical purpose Congress had in view when it made the original reservation. *Alaska Pacific Fisheries v. U. S.*, (C. C. A. 9th Cir. 1917) 240 Fed. 274, 153 C. C. A. 200.

Vol. I, p. 320, sec. 10.

Roadway through reserved lands.—The reference in this section is to a roadway through the reserved lands previously described and not other lands granted in fee under the Homestead Laws. *Worthen Lumber Mills v. Alaska, Juneau Gold Min. Co.*, (C. C. A. 9th Cir. 1916) 229 Fed. 966, 144 C. C. A. 248.

Vol. I, p. 325.

Construction.—The provision, that "along such shore a space of at least eighty rods shall be reserved from entry between all such claims," means plainly that a space of at least 80 rods shall be reserved from entry along the shore of the navigable water between claims along such shore. It does not mean that there shall be reserved a space of 80 rods from any other entry however situated. *U. S. v. Poland*, (C. C. A. 9th Cir. 1916) 231 Fed. 810, 145 C. C. A. 630.

Vol. I, p. 327.

Effect on occupation and alienation.—This act, authorizing the Secretary of the

Interior in his discretion to allot nonmineral land to any Indian or Eskimo as a homestead for the allottee and his heirs in perpetuity, which "shall be inalienable and nontaxable until otherwise provided by Congress" does not of its own force terminate the rights of occupation which the Indian had prior thereto, or place any bar upon the alienation thereof. *Worthen Lumber Mills v. Alaska, Juneau Gold Min. Co.*, (C. C. A. 9th Cir. 1916) 229 Fed. 966, 144 C. C. A. 248.

Vol. I, p. 353, sec. 1.

Additional license taxes.—The territory of Alaska may impose additional license taxes, for the purpose of revenue. When Congress by the Organic Act, conferred legislative power upon the territory of Alaska, while it expressly withheld power to alter or amend laws pertaining to fish and other certain subjects, and saved certain laws then in force, it nevertheless transferred power to the newly created legislative body to impose other and additional taxes and licenses; that is, power to impose taxes different from, and it might be additional to, those already in force when the Organic Act was approved. And so by the Organic Act those general provisions for the protection of fish which we find in the Act of 1906 was kept in force without possibility of alteration, amendment or repeal by the territorial legislature and the specific license tax provided by the Act of 1906 was kept in force, but with power transferred to the legislature to impose, if it should see fit, other and additional license taxes. *Alaska Pacific Fisheries v. Alaska*, (C. C. A. 9th Cir. 1916) 236 Fed. 52, 149 C. C. A. 262; *Hoonah Packing Co. v. Alaska*, (C. C. A. 9th Cir. 1916) 236 Fed. 61, 149 C. C. A. 271. See also *Alaska Salmon Co. v. Alaska*, (C. C. A. 9th Cir. 1916) 236 Fed. 62, 149 C. C. A. 272; *Alaska Pacific Fisheries v. Alaska*, (C. C. A. 9th Cir. 1916) 236 Fed. 70, 149 C. C. A. 280.

Vol. I, p. 355, sec. 5.

Release of obstructions.—The provision of this section requiring that 25 feet of the webbing or net of the heart of traps shall be lifted or lowered so as to permit the free passage of salmon and other fishes is not merely directory. It is a plain command of the statute and disobedience thereto is a crime under the Act. *Thlinket Packing Co. v. U. S.*, (C. C. A. 9th Cir. 1916) 236 Fed. 109, 149 C. C. A. 319.

Vol. I, p. 357, sec. 13.

Indictment.—An indictment charging a violation of section 5 of this Act, respecting the release of obstructions, need not allege that the accused was actually fish-

ing or taking fish. An allegation that the accused "did unlawfully and wrongfully maintain and operate for fishing a certain

trap" is sufficient. *Thlinket Packing Co. v. U. S.*, (C. C. A. 9th Cir. 1916) 236 Fed. 109, 149 C. C. A. 319.

ANIMALS

Vol. I, p. 374, sec. 7.

Quarantine regulations.—The Secretary of Agriculture has full authority to make regulations designating ports of import and quarantine and inspection stations, and requiring that cattle, sheep and other ruminants and swine imported into the United States, which are subject to both quarantine and inspection, must be entered at such ports of entry and inspected by an inspector of the Bureau of Animal Industry. *Estes v. U. S.*, (C. C. A. 8th Cir. 1915) 227 Fed. 818, 142 C. C. A. 342.

Vol. I, p. 377, sec. 1.

Application of statute—*Shipment originating in foreign country.*—That the point of origin of shipment was in a foreign country, is immaterial, when the period of confinement while passing through the United States exceeds the statutory limitation. Regardless of the points of origin or destination of the shipment the statute applies whenever its violation occurs within the jurisdiction of the federal government. *Grand Trunk R. Co. v. U. S.*, (C. C. A. 7th Cir. 1916) 229 Fed. 116, 143 C. C. A. 392.

Liability of connecting carrier for delay of initial carrier.—Where the initial carrier has incurred liability for the penalty, such liability is not transferred to the connecting carrier with the delivery of the stock. *U. S. v. Chicago, etc., R. Co.*, (N. D. Ia. 1916) 234 Fed. 386.

Sufficiency of request extending time.—An indorsement, by a shipper or by a member of a firm making a shipment, in his own hand writing on the blank margin of the bill of lading covering one of the shipments, is sufficient to bring the shipment in question within the terms of the proviso. *Norfolk, etc., R. Co. v. Steele*, (1915) 117 Va. 788, 86 S. E. 124.

Equipment of stock pens.—Stock pens in open corrals in the sand, wholly without shade or covering of any kind, held to be unfit and not properly equipped for rest. *Southern Pac. Co. v. Stewart*, (C. C. A. 9th Cir. 1916) 233 Fed. 956, 147 C. C. A. 630.

Defenses—*In general.*—Any defense to an action for the penalty for confinement of cattle in violation of this law must rest upon one of two grounds. One is the absence of a corpus delicti, that is any confinement not due to storms or accidents, etc. If such fact is present, the defend-

ant is not liable because no offense has been established. The other is that the offense, although made out to exist and to have been committed by the defendant, was committed unwittingly. If the carrier did not have knowledge, it is not to be penalized, even though its ignorance was due to its own carelessness, and it was misled by the negligence of its own agents or servants. *U. S. v. Philadelphia, etc., R. Co.*, (E. D. Pa. 1916) 238 Fed. 428.

Compliance with statute as defense to delay in delivery.—In *St. Louis, etc., R. Co. v. Shepherd*, (1916) 240 U. S. 240, 36 S. Ct. 274, 60 U. S. (L. ed.) 622, which was an action for damages resulting from unreasonable delay in transporting cattle from Texas to Missouri it appeared that the plaintiff had a verdict and judgment and that the latter was affirmed (see 40 Okla. 589), whereupon a writ of error was obtained in the United States Supreme Court to review the action of the Oklahoma court. One of the errors assigned was that due effect was not given to this act limiting the time that cattle in interstate transit might be confined in cars without being unloaded for rest, water and feed. It was claimed that part of the delay was excusable, because the transportation reasonably could not have been completed within the maximum time—thirty-six hours—during which the cattle could be confined in the cars and it therefore became necessary under the act to unload them for rest, water and feed for at least five hours, as was done. But the court said: "Whether the transportation reasonably could have been completed within thirty-six hours was the subject of direct and conflicting testimony and was committed to the jury as a question of fact. In that connection the court said to the jury: 'You are instructed that under the laws of the United States the defendant company could not keep the stock in this shipment in the cars longer than thirty-six hours and if you find the evidence that it was not reasonably possible that the shipment should reach Kansas City within the thirty-six hour limit, then it is not liable for the delay caused by the unloading of the stock. No exception was reserved to this instruction, no modification of it was suggested and no other instruction upon the subject was requested. It therefore is apparent that the assignments based upon this statute

are so devoid of merit as to be frivolous. Writ of error dismissed."

Accident as defense to delay.—Confinement exceeding the maximum thirty-six-hour period necessitated by accidents happening near final destination is excused where, in the exercise of ordinary care, prudence, and foresight the carrier reasonably could have expected that, following the determined schedule, the containing car would have reached its destination or some unloading place within the prescribed time, and thereafter exercised the diligence and foresight which prudent men, experienced in such matters, would have adopted to prevent accidents and delays, and to overcome the effect of any that might happen. *Chicago, etc., R. Co. v. U. S.*, 246 U. S. 512, 62 U. S. (L. ed.) 434, reversing (C. C. A. 7th Cir. 1916) 234 Fed. 268, 148 C. C. A. 170.

An indistinct notation upon a bill of lading of the time live stock was loaded on the cars is not a defense to an action under this section. It can be considered, if at all, only in mitigation. *U. S. v. Sioux City Terminal R. Co.*, (N. D. Ia. 1916) 234 Fed. 663.

Civil action for damages.—A shipper of live stock, furnished by an interstate carrier with transportation under a contract to care for, feed, water, and unload his own stock when necessary, who actually accompanies his shipment on the train in which they are transported, and consents to and participates with the carrier in a violation of the federal statutes relating to such shipment, is not in a position to maintain a civil action for damages against such carrier, alleged to have been caused by such violation. *Fluckinger v. Chicago, etc., R. Co.*, (1915) 99 Neb. 6, 154 N. W. 865.

Vol. I, p. 387, sec. 3.

"Wilfully."—The term "wilfully," as employed in this act, does not imply deliberate intent to do injury to the stock or to its owner. The jury may conclude that the violation was wilful, if from the evidence they find that the carrier in conferring the stock beyond the statutory limit, manifested disregard of the law or indifference to its requirements. *Grand Trunk R. Co. v. U. S.*, (C. C. A. 7th Cir. 1916) 229 Fed. 116, 143 C. C. A. 392; *Chicago, etc., R. Co. v. U. S.*, (C. C. A. 7th Cir. 1916) 234 Fed. 268, 148 C. C. A. 170.

The ultimate question of the wilfulness of the act of confinement must be determined from the evidentiary facts, and it makes no difference that such facts appear by stipulation of the parties rather than through oral or documentary evidence. *Chicago, etc., R. Co. v. U. S.*, (C. C. A. 7th Cir. 1916) 234 Fed. 272, 148 C. C. A. 174.

Construction of proviso—Question for court.—The proviso in this section deals wholly with the structure of the car. If

the car is such that "they can and do have proper space and opportunity to rest" then the requirement in regard to unloading does not apply. It is for the court to say what Congress meant by this language. That question cannot be left to the jury. Otherwise there would be as many rules as there are verdicts. *Northern Pac. R. Co. v. Finch*, (D. C. N. D. 1915) 225 Fed. 676.

"Opportunity to rest."—The only opportunity to rest that is possible while animals are in transit is the opportunity to lie down. The animals, while they are in transit, have no opportunity to rest standing up. Congress, having in view the muscular and nervous strain to which animals are subjected while on cars, passed the law requiring them to be unloaded at stated intervals. It is too plain for debate that such animals, while they are in the unusual situation in which they are placed on cars in rapid motion, subject to the jolts and jerks of such cars, are subject to a severe nervous and muscular strain, such a strain as they never experience in the stable or field. The only rest possible from that strain while the animals are on the cars is for them to lie down. It is plain, therefore, that the phrase "opportunity to rest" means opportunity to lie down. *Northern Pac. R. Co. v. Finch*, (D. C. N. D. 1915) 225 Fed. 676.

Burden of bringing case within proviso.—It is not necessary to the recovery of a penalty under this section that the government negative the excuse embodied in the proviso of this section. That excuse is a separate topic, a defense and the burden is on the defendant to establish it. And where the declaration contains a negative allegation with respect to the absence of storms or other unavoidable causes excusing compliance with the Act such an allegation is mere surplusage and affirmative evidence in support thereof is unnecessary. *Grand Trunk R. Co. v. U. S.*, (C. C. A. 7th Cir. 1916) 229 Fed. 116, 143 C. C. A. 392.

Vol. I, p. 393, sec. 4.

State regulations.—When the subject of transportation of live stock from one state to another is taken under direct national supervision and a system devised by which diseased stock may be excluded from interstate commerce, any state regulations in respect of such matters will cease to have any force. The acts of Congress and the regulations thereunder will alone control. *Pecos, etc., R. Co. v. Hall*, (Tex. Civ. App. 1916) 189 S. W. 535.

Vol. I, p. 397, sec. 1.

Validity of statute.—The stated purpose of the Meat Inspection Act is "to prevent the use in interstate and foreign commerce of meat and meat food products, which are unsound, unhealthful, unwholesome or otherwise unfit for human food,"

and it would seem that a purpose so obviously beneficial should receive the sanction and approval of the courts, unless in the face of an unquestionable constitutional prohibition against the right of Congress to enact such legislation. *U. S. v. Cudahy Packing Co.*, (D. C. Conn. 1917) 243 Fed. 441.

Purpose of law.—The entire Meat Inspection Law was, as distinctly indicated in it, to prevent the sale of food which is unsound, unwholesome or otherwise unfit for human use or misbranded. It was not the design of Congress to provide standards of quality except to prohibit the sale of food which was unsound, unwholesome or otherwise unfit for human use and secure true branding. *St. Louis Independent Packing Co. v. Houston*, (C. C. A. 8th Cir. 1914) 215 Fed. 553, 132 C. C. A. 65, *reversing* (E. D. Mo. 1913) 204 Fed. 120. See also *St. Louis Independent Packing Co. v. Houston*, (C. C. A. 8th Cir. 1917) 242 Fed. 337, 155 C. C. A. 113.

Relation to Oleomargarine Act.—This statute applies to oleomargarine dealers notwithstanding the Oleomargarine Act of May 9, 1902, ch. 784 (title FOOD AND DRUGS, vol. 3, p. 353). Whatever may have been the ulterior purpose in the passage of the Oleomargarine Law, it cannot be held that anything in it tended to subtract any power subsequently conferred on the Secretary of Agriculture under the Meat Inspection Law. The Oleomargarine Law, was enacted in the exercise of the taxing power and this could not prevent Congress, under the power to regulate commerce, enacting the Meat Inspection Law in the interest of public health or welfare. *Brougham v. Blanton Mfg. Co.*, (C. C. A. 8th Cir. 1917) 243 Fed. 503, 156 C. C. A. 201.

Meat food product.—Oleo oil is a meat food product. It is, without being refined or undergoing any chemical change, the principal ingredient of oleomargarine. In manufacturing this substitute for butter, oleo oil is mechanically mixed with other substances. What the oleo oil was before mixing, it continues to be afterward; the mixture is fit for human consumption and is largely used for food. *Totten v. Pittsburgh Melting Co.*, (C. C. A. 3d Cir. 1916) 232 Fed. 694, 146 C. C. A. 620, *reversing* (W. D. Pa. 1916) 229 Fed. 214.

Oleomargarine is a meat food product and its manufacture comes within the language of this Act. *Brougham v. Blanton Mfg. Co.*, (C. C. A. 8th Cir. 1917) 243 Fed. 503, 156 C. C. A. 201.

Authority to make regulations.—While it is true that Congress cannot delegate its legislative powers, it can, nevertheless, delegate authority to the proper administrative or executive officer to make administrative rules, violations of which may be punished as public offenses where the

act of legislation which delegates the authority ordains that this be done. *U. S. v. Cudahy Packing Co.*, (D. C. Conn. 1917) 243 Fed. 441.

That Congress may delegate to an executive officer the power to determine facts and conditions upon which the operation of the statute depends, without violating the prohibition against the delegation of legislative functions, is settled. *U. S. v. Pennsylvania Co.*, (W. D. Pa. 1916) 235 Fed. 961.

Finality of Secretary's decision.—It is within the discretion of the Secretary of Agriculture to find whether meat products are unsound, unhealthful or unwholesome. But his finding is not conclusive upon the courts. *St. Louis Independent Packing Co. v. Houston*, (C. C. A. 8th Cir. 1917) 242 Fed. 337, 155 C. C. A. 113, *reversing* (E. D. Mo. 1916) 231 Fed. 779. See also *St. Louis Independent Packing Co. v. Houston*, (C. C. A. 8th Cir. 1914) 215 Fed. 553, 132 C. C. A. 65, *reversing* (E. D. Mo. 1913) 204 Fed. 120.

Vol. I, p. 399. [*Inspectors, etc.*]

Inspection by packer.—Under the rules and regulations prescribed by the Secretary of Agriculture, the packer is forbidden to make an inspection prior to the government's inspection, in the manner in which such inspection is made; but there is nothing to indicate that a subsequent independent inspection is forbidden or could not be made by the packer. And where he fails to make an inspection for himself in order to determine whether the meat sold by him is fit for food, the inspection by the government will not relieve him from civil liability for damages. *Catani v. Swift*, (1915) 251 Pa. St. 52, 95 Atl. 931, L. R. A. 1917B 1272.

Vol. I, p. 403. [*Inspection, etc.*]

Civil liability.—The provisions herein for meat inspection by government officers do not relieve the packer from liability for damages where he has made no inspection nor taken any steps to ascertain for himself whether the meat sold by him is fit for food. The common-law duty to sell only wholesome food still remains, and the burden of discharging this duty has not been shifted to government inspectors. So where the jury having found that the death of plaintiff's husband was the result of eating meat packed by, defendant which was affected by a disease which the evidence showed was discoverable by proper inspection, it was held that the burden was on defendant to show fulfillment of its duty, which burden was not met by merely proving inspection by the United States government inspectors. *Catani v. Swift*, (1915) 251 Pa. St. 52, 95 Atl. 931, L. R. A. 1917B 1272.

Vol. I, p. 404. [*Appointment of inspectors, etc.*]

Authority to make regulations.—While it is true that Congress cannot delegate its legislative powers, it can nevertheless, delegate authority to the proper administrative or executive officer to make administrative rules, violations of which may be punished as public offenses where the act of legislation which delegates the authority ordains that this be done. *U. S. v. Cudahy Packing Co.*, (D. C. Conn. 1917) 243 Fed. 441.

That Congress may delegate to an executive officer the power to determine facts and conditions upon which the operation of the statute depends, without violating the prohibition against delegation of legislative functions, is settled. *U. S. v. Pennsylvania Co.*, (W. D. Pa. 1916) 235 Fed. 961.

The Secretary of Agriculture has no power to adopt and enforce a regulation which prohibits the making of a compound which is sound, healthful, wholesome, and free from dyes, chemicals, preservatives or ingredients which render such compound unfit for human food. *St. Louis Independent Packing Co. v. Houston*, (C. C. A. 8th Cir. 1914) 215 Fed. 553, 132 C. C. A. 65, holding that the Secretary of Agriculture had no power to prohibit the manufacture and sale of sausage and cereal where the cereal was in excess of 2 per cent, *reversing* (E. D. Mo. 1913) 204 Fed. 120. See also *St. Louis Independent Packing Co. v. Houston*, (C. C. A. 8th Cir. 1917) 242 Fed. 337, 155 C. C. A. 113, *reversing* (E. D. Mo. 1916) 231 Fed. 779.

Vol. I, p. 405. [*Exceptions, etc.*]

Application of first proviso.—This proviso does not fix responsibility for the condition of food subsequent to its inspection. So, one who delivers and offers for transportation in interstate commerce an unwholesome food product which is marked

"inspected" by label as provided in this Act, is not within the proviso. *U. S. v. Northwestern Fisheries Co.*, (W. D. Wash. 1915) 224 Fed. 274.

Vol. I, p. 411, sec. 1.

Power of Secretary to prescribe regulations.—To accomplish the purpose of this statute, the Secretary of Agriculture is authorized to make such regulations and take such measures as may be deemed proper. It may be wholly impracticable for Congress to determine what measures should be taken to prevent the spread of animal diseases. New conditions arise, and not infrequently an epidemic breaks out requiring prompt measures in order to successfully combat it. Evidently this can best be accomplished by the employment of some executive agency under such restriction as Congress may see fit to impose. That Congress may delegate to an executive officer the power to determine facts and conditions upon which the operation of the statute depends, without violating the prohibition against the delegation of legislative functions, is settled. *U. S. v. Pennsylvania Co.*, (W. D. Pa. 1916) 235 Fed. 961. See also *U. S. v. Cudahy Packing Co.*, (D. C. Conn. 1917) 243 Fed. 441.

Vol. I, p. 413, sec. 2.

Quarantine regulations.—The Secretary of Agriculture has full authority to make regulations designating ports of import and quarantine and inspection stations and requiring that horses, cattle, sheep and other ruminants, and swine imported into the United States, which are subject to both quarantine and inspection, must be entered at such ports of entry and inspected by an inspector of the Bureau of Animal Industry. *Estes v. U. S.*, (C. C. A. 8th Cir. 1915) 227 Fed. 818, 142 C. C. A. 342.

BAIL AND RECOGNIZANCES

Vol. I, p. 490, sec. 1015.

Declaratory of common law.—The power conferred by Congress to bail offenders against the criminal laws of the United States is declaratory of the power inherent at the common law. *Ewing v. U. S.*, (C. C. A. 6th Cir. 1917) 240 Fed. 241, 153 C. C. A. 167.

Vol. I, p. 492, sec. 1020.

Petition—Pleading.—An allegation in the petition for the remission of the pen-

alty, "that there has been no wilful default" of the defendant or his sureties is a sufficient averment of that fact. Allegations of the evidence that the default was not wilful are not necessary. *U. S. v. Smart*, (C. C. A. 8th Cir. 1916) 237 Fed. 978, 150 C. C. A. 628.

Verification.—The verification of the petition by a person who put up the money to induce the sureties to sign the recognizance, and who is therefore the real party in interest, is sufficient. *U. S.*

v. Smart, (C. C. A. 8th Cir. 1916) 237 Fed. 978, 150 C. C. A. 628.

Time for application for remission.—The penalty may be remitted after final judgment, after the expiration of the term

in which the default was adjudged and after the expiration of the term in which the final judgment was entered. *U. S. v. Smart*, (C. C. A. 8th Cir. 1916) 237 Fed. 978, 150 C. C. A. 628.

BANKRUPTCY

Vol. I, p. 504.

General purposes of the Act.—The purpose of the Bankruptcy Act is to establish a uniform system of bankruptcy throughout the United States, and place the bankrupt's property, wherever situate, under the control of the court, for the purpose of determining the status of the bankrupt and the settlement and distribution of such estate. *West v. Empire L. Ins. Co.*, (W. D. Wash. 1917) 242 Fed. 605.

Suspension of state insolvency laws.—The bankruptcy law is paramount. *Hawkins v. Dannenberg Co.*, (S. D. Ga. 1916) 234 Fed. 752.

Where the jurisdiction of the federal Bankruptcy Court is invoked, the state insolvency laws are suspended. *Shaw v. Standard Piano Co.*, (N. J. 1917) 100 Atl. 167.

Vol. I, p. 510, sec. 1a (9).

Attorney.—This court is of the opinion that the practice which has grown up, and which seems to be recognized by the Act itself, requiring attorneys-at-law duly admitted, who appear for a creditor and desire to vote for trustee, to have specific written authority, is a wise and necessary rule of practice. *In re Capitol Trading Co.*, (D. C. N. D. N. Y. 1916) 229 Fed. 806. See also *In re H. E. Ploof Mfg. Co.*, (D. C. S. D. Fla. 1916) 243 Fed. 421.

Vol. I, p. 511, sec. 1a (15).

Capital stock.—This definition indicates that the capital stock of a corporation is not to be taken into account in determining whether a corporation is insolvent. Capital stock is a liability, but in no sense can it be said to be a corporate debt to be reckoned with in ascertaining whether the company is insolvent. *Tepel v. Coleman*, (D. C. Pa. 1914) 229 Fed. 300.

Vol. I, p. 515, sec. 1a (24).

Porto Rico is included in the word "states," as here used. *In re Vidal*, (C. C. A. 1st Cir. 1916) 233 Fed. 733, 147 C. C. A. 409.

Vol. I, p. 515, sec. 1a (25).

The word "transfer" is given a broad meaning by the statutory definition. A

money payment is within this generality of definition. *Golden Hill Distilling Co. v. Logue*, (C. C. A. 6th Cir. 1917) 243 Fed. 342, 156 C. C. A. 122.

Vol. I, p. 516, sec. 2.

Not courts of limited jurisdiction.—The United States District Courts are by the Bankruptcy Act created into Bankruptcy Courts, and their jurisdiction as such is limited. *In re Hollins*, (C. C. A. 2d Cir. 1916) 229 Fed. 349, 143 C. C. A. 469.

But such jurisdiction is unlimited in respect of its power over proceedings in bankruptcy. *In re Sage*, (E. D. Mo. 1915) 224 Fed. 525.

The jurisdiction of the Bankruptcy Court is intended to be exclusive of all other courts. Commercial Trust, etc., *Bank v. Busch-Grace Produce Co.*, (C. C. A. 6th Cir. 1916) 228 Fed. 300, 142 C. C. A. 592. And such proceedings include all matters of administration and the determining of rights between contending parties with relation to the estate upon a fund in the custody of the court. *Gibbons v. Dexter Horton Trust, etc., Bank*, (W. D. Wash. 1915) 225 Fed. 424.

A bill in equity will not be entertained for the purpose of adjudicating any matter or reviewing any proceeding in the court of administration in the Bankruptcy Court. *Gibbons v. Dexter Horton Trust, etc., Bank*, (W. D. Wash. 1915) 225 Fed. 424.

Equitable jurisdiction.—The Bankruptcy Court is a court of equity and, controlled by the statute, may do equity guided by the well-defined and established principles of equity jurisprudence. *In re Syracuse Gardens Co.*, (N. D. N. Y. 1916) 231 Fed. 284.

Where the necessary parties are before a court of equity, it is immaterial that the subject-matter of the controversy, whether real or personal property, is beyond the territorial jurisdiction of the court. In such case the power exists to compel a defendant to do all things necessary which he could do voluntarily to give full effect to the decree against him. Obedience to the decrees so made is enforced by means of process against the person. *Orinoco Iron Co. v. Metzel*, (C. C. A. 6th Cir. 1916) 230 Fed. 40, 144 C. C. A. 338.

A Bankruptcy Court does not always require actual and intentional fraud to afford a remedy in equity. Implied fraud or constructive fraud growing out of both representations and the concealment of or failure to disclose material facts, many times is ground for equitable relief. *In re Syracuse Gardens Co.*, (N. D. N. Y. 1916) 231 Fed. 284.

Appointment of special master.—A court in bankruptcy is a court of equity and has the powers of a court of equity, and this carries with it the power of appointing a special master to take evidence in aid of the court, and these special masters may be standing masters in chancery or appointed pro hac vice in particular cases. *U. S. v. Coyle*, (N. D. N. Y. 1916) 229 Fed. 256.

Vol. I, p. 518, sec. 2 (1).

Jurisdiction as dependent on residence, domicile, or place of business.—By the terms of the Act it appears that District Courts are invested with jurisdiction to adjudge persons bankrupt (1) who have had their principal place of business, or (2) who have resided, or (3) who have had their domicile within their respective territorial jurisdictions for the period of six months, or the greater portion thereof. The grant of jurisdiction is therefore not general in the sense that persons may be adjudged bankrupt, regardless of the place of their residence, etc. But the jurisdiction of the court over the estate of the bankrupt, the subject-matter of the proceeding, is confined by the terms of the act to such persons as may be embraced within one of the three categories mentioned. *Finn v. Carolina Portland Cement Co.*, (C. C. A. 5th Cir. 1916) 232 Fed. 815, 147 C. C. A. 9.

Residence as dependent on place of business.—*The residence of a partnership* is at its principal place of business, and not where the individual members reside, though some business is done in the latter place. *In re Gurler*, (N. D. Ia. 1916) 232 Fed. 1016.

Traveling salesman.—In the case of a traveling salesman whose only compensation consists of a commission on sales, and who spends over one-half of his time on the road it has been held that he does not have a "place of business," within the meaning of this section, at the place where he spends the remainder of his time so as to confer jurisdiction on the federal court in the latter place. *In re Price*, (S. D. N. Y. 1916) 231 Fed. 1001.

Corporations principal place of business—*Question of fact.*—The question as to where the principal place of business of a corporation is situated is determined purely by the facts, and not by intentions of the corporate authorities or recitals in the charter. *In re San Antonio*

Land, etc., Co., (S. D. N. Y. 1916) 228 Fed. 984.

The locus of the principal place of business of a corporation is a question of fact and the burden of proving it rests on the petitioning creditors. *In re Pennington*, (W. D. Ky. 1915) 228 Fed. 388.

Concurrent jurisdiction.—Where a corporation has its domicile in one district and its principal place of business in another the court of either district has jurisdiction. *In re New Era Novelty Co.*, (D. C. N. J. 1916) 241 Fed. 298.

Jurisdiction in case of aliens.—Whether the alleged bankrupt is an alien, or his creditors are aliens, or both, the United States courts has jurisdiction, provided there is "property within their jurisdiction." *In re Berthoud*, (S. D. N. Y. 1916) 231 Fed. 529.

Objection to jurisdiction.—The fact that a bankrupt appears by filing demurrer to the petition of the creditors, going to the merits of the controversy without objecting to the jurisdiction does not preclude him from thereafter timely asserting the want of jurisdiction. *Finn v. Carolina Portland Cement Co.*, (C. C. A. 5th Cir. 1916) 232 Fed. 815, 147 C. C. A. 9.

"Property within their jurisdictions."—In determining what is included or meant by this phrase it has been said: "For the purpose of making a record that may be available in case of appeal, however, I will say that I think the meaning of the word 'property' under the Bankruptcy Act should be much the same as that under judicial decisions relating to matters of taxation and attachment." *In re San Antonio Land, etc., Co.*, (S. D. N. Y. 1916) 228 Fed. 984.

Obligation of bank to pay depositor or property within the jurisdiction.—In this connection it has been said: "Whether the obligation of the National Park Bank to pay its depositor, Berthoud, be called a debt or a chose in action, the result is the same. It is clearly property, and has been so considered in many cases involving a wide variety of questions as to the relation between a bank and its depositor; and, by a course of practical construction by courts of bankruptcy, a bank deposit, by whatever name called in law, has been regarded and treated as property." *In re Berthoud*, (S. D. N. Y. 1916) 231 Fed. 529.

Vol. I, p. 521, sec. 2 (2).

Jurisdiction of court—In general.—It is well settled that, where the Bankruptcy Court has acquired lawful custody of property to which conflicting liens attach, it has jurisdiction to determine the priorities of such liens, though the trustee has no interest in such question; that the administration and distribution of the property of bankrupts is a proceeding in equity, and, when authorized by Act of

Congress, it becomes a branch of equity jurisprudence; that property in the custody of a court of equity for administration is always held by it in trust for those to whom it rightfully belongs. The jurisdiction to inquire and determine who the lawful owners are, and to that end to call before it all claimants by a reasonable notice or order to present their claims to the court within a reasonable time, or to be barred of any right or interest in the property, in its custody, or in its proceeds, is a power inherent in every court of equity, incidental and indispensable to the authority to administer the property in its possession and to distribute its proceeds. These principles are announced and confirmed in many decisions of this court and the Supreme Court. *Nisbet v. Federal Title, etc., Co.*, (C. C. A. 8th Cir. 1915) 29 Fed. 647, 144 C. C. A. 54.

Generally speaking, the jurisdiction of courts of bankruptcy in the administration of bankrupt estates extends "to all matters of bankruptcy without limitation. It is coextensive with the United States." It knows no state or district boundaries. *Orinoco Iron Co. v. Metzel*, (C. C. A. 6th Cir. 1916) 230 Fed. 40, 144 C. C. A. 338.

The rule which gives the Bankruptcy Court exclusive jurisdiction to determine claims to property in its custody is not limited to actual possession, but extends to constructive possession as well including property held not only by but for the bankrupt. *Orinoco Iron Co. v. Metzel*, (C. C. A. 6th Cir. 1916) 230 Fed. 40, 144 C. C. A. 338.

Conflicting and adverse claims.—As to property within the custody of the Bankruptcy Court its exclusive jurisdiction over the general administration of the bankrupt's estate carries with it exclusive authority to determine, not only the claims of creditors, but also adverse claims, whether by way of ownership or paramount liens. *Orinoco Iron Co. v. Metzel*, (C. C. A. 6th Cir. 1916) 230 Fed. 40, 144 C. C. A. 338.

Where the bankrupt has possession of the property, and such possession passes to the trustee, this possession gives to the Bankruptcy Court control of the res and authority to administer it; and of course authority to administer it includes the power to ascertain and determine all conflicting claims thereto, whether the claimants reside in the district where such bankruptcy proceeding is pending or in some other state. *In re Wegman Piano Co.*, (N. D. N. Y. 1915) 228 Fed. 60.

Remedy.—A court which has possession of a fund has jurisdiction of a proceeding in which a petitioner claims a lien thereon and the proper and most convenient method is by ancillary bill filed in the bankruptcy proceedings. *Brown Bros. Co. v. Smith Bros. Co.*, (E. D. Ia. 1916) 231 Fed. 475.

Vol. I, p. 522, sec. 2 (3).

Appointment of receiver—Paramount jurisdiction of Bankruptcy Court.—The fact that the bankrupt has made a general assignment under the state law to one who has taken possession of the estate does not preclude the Bankruptcy Court from exercising its jurisdiction to appoint a receiver, especially where the interests of creditors will be better protected. *In re Federal Mail, etc., Co.*, (S. D. N. Y. 1916) 233 Fed. 691.

Appointment must be necessary for preservation of estate.—"In order to warrant the court in appointing a receiver, the court must find that it is absolutely necessary for the preservation of the property of the bankrupt that a receiver be placed in charge thereof." *In re Hargadine-McKittrick Dry Goods Co.*, (E. D. Mo. 1917) 239 Fed. 155.

Where a receiver has been appointed by a state court and it is not claimed that he is not careful, prudent or responsible or that the assets are in any way endangered, a federal Bankruptcy Court should not interfere by appointing a receiver to take charge of the estate. *Ingram v. Ingram Dart Lighterage Co.*, (S. D. Ga. 1915) 226 Fed. 58.

"A receiver appointed by the state court is in every sense the official arm of that court, and while this court, sitting in bankruptcy, has in my opinion exclusive jurisdiction, after a petition has been filed, to control the custody of the property, there can be no reason ordinarily for adding to the expenses by appointing a federal receiver, and such appointment should not, in the absence of special controlling circumstances, be made. That receiver is the choice of a court acting independently of the insolvent, and not of the insolvent himself." *In re Federal Mail, etc., Co.*, (S. D. N. Y. 1916) 233 Fed. 691.

In involuntary proceedings receivers should never be appointed under this section without full compliance with all the requirements, including a showing of cause. It is an extraordinary remedy which should only be granted when, as the statute says, "absolutely necessary" for the preservation of the estate. *Badders Clothing Co. v. Burnham-Munger-Root Dry Goods Co.*, (C. C. A. 8th Cir. 1915) 228 Fed. 470, 143 C. C. A. 52.

Proof of necessity.—"Where the appointment of a receiver in bankruptcy is sought, it is not enough to allege the necessity for such appointment in the language of the state, but the moving papers must set forth the specific facts which reasonably establish such necessity." *In re Hargadine-McKittrick Dry Goods Co.*, (E. D. Mo. 1917) 239 Fed. 155.

Receiver's powers and duties in general—As to court orders.—In addition to the duties devolving upon a receiver as a pre-

server of property actually in his possession, he is a proper person, pending the appointment of a trustee, to carry out any orders that the court may make for the enforcement of the provisions of the Bankruptcy Act under section 2, subd. 15. It is his duty, as well as his privilege, to bring to the court's attention any matters which suggest the advisability of making an order as to book accounts transferred to a creditor. *In re Gottlieb*, (D. C. N. J. 1917) 245 Fed. 139.

A receiver of private bankers in a Bankruptcy Court is not entitled to hold the proceeds of checks collected by them for depositors where the pass book provided that "Deposits of checks shall not be drawn against until collected." And the fact that the depositors were permitted as a favor to draw upon the deposit is not material, it not appearing that there was any agreement, express or implied, which modified the provision in the pass book. *In re H. & L. Jarmulowsky*, (S. D. N. Y. 1917) 243 Fed. 632.

Right of receiver to maintain suits—Suit to prevent enforcement of fraudulent judgment.—A receiver may maintain a suit to prevent the enforcement of a judgment on the ground that it was fraudulently procured, although the claim has not been formally presented. *Owen v. Clifton*, (C. C. A. 5th Cir. 1916) 232 Fed. 136, 146 C. C. A. 328.

Intervention by party.—A party may not intervene in an ancillary suit brought by the trustee or receiver, the sole purpose of which is to collect assets of the bankrupt for transmission to the Bankruptcy Court for administration. *West v. Empire L. Ins. Co.*, (W. D. Wash. 1917) 242 Fed. 605.

Restraining suits against receivers.—Where an order appointing an ancillary receiver of a corporation enjoined the corporation, its officers "and all other persons whomsoever, . . . from interfering with, attaching, levying upon, or in any manner whatsoever disturbing the claims, choses in action, and causes of action of the said defendant railway company, . . . or any of the property and premises of the defendant railway company, . . . or from taking possession of, or in any way assuming a control of, or from interfering with, the said claims, choses in action, causes of action, or any other property or premises, or any part thereof," it was held that such provision did not prevent the prosecution of previously instituted actions by stockholders against the corporation and others. *American Steel Foundries v. Chicago, etc., R. Co.*, (S. D. N. Y. 1915) 231 Fed. 1003.

Vol. I, p. 529, sec. 2 (7).

Jurisdiction conferred by section.—A bankrupt estate is within the exclusive jurisdiction of the Bankruptcy Court from the time of the filing of the petition, and

this jurisdiction does not depend upon actual possession of the property affected; there is no right to seize or attach property admittedly belonging to an alleged bankrupt after the filing of the petition against him, without the consent of the Bankruptcy Court, regardless of whether actual possession of the property has been taken by its officers. *In re Wellmade Gas Mantle Co.*, (D. C. Mass. 1916) 230 Fed. 502.

The Bankruptcy Court has jurisdiction under this section of a bill in equity filed by trustees to restrain foreclosure of certain mortgages made by the bankrupt in which the validity of these mortgages, as well as the amount due thereunder, is attacked in an attempt to test their claims against the property now in the possession of trustees elected in bankruptcy proceedings pending in this district. *Karasik v. People's Trust Co.*, (E. D. N. Y. 1917) 241 Fed. 939.

"Generally speaking, a court of equity has power to determine all questions affecting a fund in course of distribution." *In re Jamison*, (C. C. A. 3d Cir. 1915) 227 Fed. 30, 142 C. C. A. 3.

Where shares of stock are actually in the custody of the trustee, who holds them in that character, the court has jurisdiction to determine the question as to the right of the parties where they had been pledged by the bankrupt and afterwards returned to the trustee by the pledgee. *In re Jamison*, (C. C. A. 3d Cir. 1915) 227 Fed. 30, 142 C. C. A. 3.

Determination of extent of liens and rights thereunder.—As to the exercise of jurisdiction by the federal courts in the case of a petition by lien creditors to have the property of a bankrupt returned to a state court for administration there it has been said: "Where the admitted and uncontested liens on any part or portion of the bankrupt estate clearly exceed the value of that property, so as that it is manifest that under no circumstances there can be any fund therefrom to be administered for the unsecured creditors, the courts of bankruptcy have exercised the discretion of permitting the lien creditors to realize on their securities in their own way, either by permitting proceedings already commenced in state courts for that purpose to proceed or by permitting the lien creditors to exercise any powers of sale they may have, or to initiate proceedings in any court of competent jurisdiction they prefer, to realize on their security. This has been done upon the theory that, inasmuch as in such cases the property really belongs to the lien creditors, the bankrupt court is not required to burden it with the expense of an administration in bankruptcy, if the lien creditors prefer another method or tribunal for the administration." *Union Electric Co. v. Hubbard*, (C. C. A. 4th Cir. 1917) 242 Fed. 248, 155 C. C. A. 88.

Vol. I, p. 531, sec. 2 (8).

Reopening of estate.—Where an application is made to reopen an estate the referee may take judicial notice of what his own record showed in the original case. *Pollack v. Meyer Bros. Drug Co.*, (C. C. A. 8th Cir. 1916) 233 Fed. 861, 147 C. C. A. 535.

Time of making application for reopening.—An application to reopen is regarded as timely though made more than two years after the closing of the estate, where made directly after the recording of conveyances alleged to be fraudulent. *Duncan v. Watson*, (Ala. 1916) 73 So. 448.

Practice.—Where, after the referee has overruled a demurrer by a bankrupt to a petition to reopen the estate, any error in the ruling on the demurrer is waived by the bankrupt pleading over in an answer. *Pollack v. Meyer Bros. Drug Co.*, (C. C. A. 8th Cir. 1916) 233 Fed. 861, 147 C. C. A. 535.

Vol. I, p. 533, sec. 2 (11).

Extent of jurisdiction.—*Generally.*—After property has been set apart to the bankrupt as exempt, the jurisdiction of the Bankruptcy Court is at an end so far as adjudication of the rights of claimants thereto is concerned. *Barker-Bond Lumber Co. v. Whaley*, (1915) 117 Va. 642, 86 S. E. 160.

Vol. I, p. 535, sec. 2 (15).

General power of Bankruptcy Court.—Where the question involved is that of jurisdiction to enforce the bankruptcy law or to administer the estate and to protect the bankrupt free from claims vacated or made void by the adjudication the provisions of this section apply. But the court can obtain control of the bankrupt only to carry out the law and not to prevent litigation in courts which have jurisdiction to litigate. *In re Lockwood*, (E. D. N. Y. 1917) 240 Fed. 161.

Power to open and reconsider orders.—The court of bankruptcy is always open, and until the distribution of the fund in controversy the court has the power to open and reconsider on the merits its own orders. *Hume v. Myers*, (C. C. A. 4th Cir. 1917) 242 Fed. 827, 155 C. C. A. 415.

Enforcing agreement by claimant of property to surrender proceeds of sale to officers of court.—A Bankruptcy Court has power to enforce an agreement by which a claimant of property undertakes to sell the same and deliver the proceeds of the sale to the receiver of a bankrupt. *In re Hollingsworth, etc., Co.*, (C. C. A. 1st Cir. 1917) 242 Fed. 753, 155 C. C. A. 341.

Injunction lies to protect or preserve assets.—*In re Consumers' Albany Brewing Co.*, (N. D. N. Y. 1915) 224 Fed. 235.

Powers and duty of receiver.—In addition to the duties devolving upon a re-

ceiver as a preserver of property actually in his possession, he is a proper person, pending the appointment of a trustee, to carry out any orders that the court may make for the enforcement of the provisions of the Bankruptcy Act under section 2, subd. 16. It is his duty, as well as his privilege, to bring to the court's attention any matters which suggest the advisability of making an order as to book accounts transferred to a creditor. *In re Gottlieb*, (D. C. N. J. 1917) 245 Fed. 139.

Vol. I, p. 538, sec. 2 (16).

Facts must exist showing contempt.—*In re Sobol*, (C. C. A. 2d Cir. 1917) 242 Fed. 487, 155 C. C. A. 263.

Defense.—The fact that a bankrupt has been sentenced for concealing assets and has served out his term is no defense in a proceeding to punish him for contempt with an order to turn over the assets he concealed. *In re Sobol*, (C. C. A. 2d Cir. 1917) 242 Fed. 487, 155 C. C. A. 263.

Valid excuse.—The law is well settled that inability to comply with an order requiring the payment of money, resulting from poverty, insolvency, or other cause not attributable to the fault of the party charged, will under ordinary circumstances be received as a valid excuse from the consequences of contempt. *In re Sobol*, (C. C. A. 2d Cir. 1917) 242 Fed. 487, 155 C. C. A. 263.

Criminal contempt.—Where the act complained of as a contempt is criminal under the Bankruptcy Act it seems that even conceding the existence of the power to punish by imprisonment for contempt, the court should not exercise it. *In re Elias*, (E. D. N. C. 1917) 240 Fed. 448.

Vol. I, p. 538, sec. 2 (20).

Ancillary jurisdiction authorized.—"The ancillary court may act summarily in aid of the court of original jurisdiction, when such court could have compelled an act by summary proceeding. *Babbitt v. Dutcher*, 216 U. S. 102, 30 Sup. Ct. 372, 54 L. ed. 402, 17 Ann. Cas. 969. But for all substantial purposes of administration the court of original jurisdiction, which is in control of the bankrupt estate, is regarded as in charge, and the ancillary court has nothing to do but collect the assets and transmit them to the bankruptcy court for distribution." *West v. Empire Life Ins. Co.*, (W. D. Wash. 1917) 242 Fed. 605.

It is well settled that a court of bankruptcy can exercise ancillary jurisdiction for the purpose of enabling a trustee in bankruptcy, who has been appointed and qualified in another jurisdiction, to reduce to his possession property of the bankrupt which is within the territorial jurisdiction of the court whose ancillary

jurisdiction is invoked, and that, where the court of primary jurisdiction can act summarily, the court exercising ancillary jurisdiction may also proceed in summary order. *In re Sage*, (E. D. Mo. 1915) 224 Fed. 525.

A court exercising ancillary jurisdiction and powers in aid of the main jurisdiction and having possession of a specific fund, the title to which is in question and the existence or nonexistence of liens thereon, held by parties residing in the jurisdiction of the court of ancillary jurisdiction, being in question, such last-mentioned court has the power, and it is its duty, to determine title and the existence or nonexistence of such liens thereon. *In re Einstein*, (N. D. N. Y. 1917) 245 Fed. 189.

Ancillary receiver—Restraining suits against.—Where an order appointing an ancillary receiver of a corporation enjoined the corporation, its officers "and all other persons whomsoever, . . . from interfering with, attaching, levying upon, or in any manner whatsoever disturbing the claims, choses in action, and causes of action of the said defendant railway company, . . . or any of the property and premises of the defendant railway company, . . . or from taking possession of, or in any way assuming a control of, or from interfering with, the said claims, choses in action, causes of action, or any other property or premises, or any part thereof," it was held that such provision did not prevent the prosecution of previously instituted actions by stockholders against the corporation and others. *American Steel Foundries v. Chicago, etc., R. Co.*, (S. D. N. Y. 1915) 231 Fed. 1003.

Adverse claims.—A court of bankruptcy exercising ancillary jurisdiction has power to determine whether or not a fund held by a receiver in bankruptcy belongs to the estate for which he is acting or to another bankrupt estate and to make proper allowances to the receiver where he has had the care and custody of the fund and has been charged with its preservation. *In re Einstein*, (N. D. N. Y. 1917) 245 Fed. 189.

In *Jaffe v. Pyle*, (C. C. A. 5th Cir. 1917) 242 Fed. 67, 155 C. C. A. 11, the plaintiffs set out in their bill that by fraudulent practices the bankrupt firm had obtained a certain sum of money from them; that the same constituted a trust fund in the hands of the said bankrupts; that subsequently, out of the trust fund, they purchased certain cotton; and that this same cotton came into the possession of this court by virtue of ancillary proceedings in the said bankruptcy. The bill prayed that the cotton be impressed with a trust in their favor to the extent of their claim. The court quoted from the opinion of the trial

judge on the demurrer and supported him in the disposition of the case.

Right to intervene in ancillary suit.—"A party may not intervene in an ancillary suit brought by the trustee or receiver, the sole purpose of which is to collect assets of the bankrupt for transmission to the bankruptcy court for administration." *West v. Empire Life Ins. Co.*, (W. D. Wash. 1917) 242 Fed. 605.

Vol. I, p. 540, sec. 3a.

"The burden is upon the petitioner to show the respondent has committed an act which brings it within the purview of the statute." *Maplecroft Mills v. Childs*, (C. C. A. 4th Cir. 1915) 226 Fed. 415, 141 C. C. A. 245.

The fact that acts charged against a corporation were ultra vires and void, and were not corporate acts does not constitute a defense to a petition for an adjudication of bankruptcy. *Badders Clothing Co. v. Bunham-Munger-Root Dry Goods Co.*, (C. C. A. 8th Cir. 1915) 228 Fed. 470, 143 C. C. A. 52.

Vol. I, p. 541, sec. 3a (1).

Necessity of intention to hinder, delay or defraud.—In this connection it has been said regarding a chattel mortgage: "Do the chattel mortgage and the other evidence in the case establish the fact that this mortgage was made with the intent to hinder, delay, or defraud creditors, within the meaning of section 3, subdivision 1, of the Bankruptcy Law? An intent to hinder, delay, or defraud creditors unlawfully, not a mere intent to hinder or delay or defraud them so far as necessary to enable the mortgagee to collect his claim from the mortgaged property, by means of his mortgage, is indispensable to this intent. Until the commencement of bankruptcy proceedings a debtor has the right to dispose of his property, the right to secure and pay his debts with it, and the right to secure and pay one of his creditors in preference to others, provided the payment or security is not violative of any Act of Congress or law of the state. There is no proof in this case that the chattel mortgage here in question violated any other provision of law than the part of section 3 which describes the first act of bankruptcy there mentioned. Hence the mere fact that the mortgage had the effect to prefer one creditor to another, or to hinder or delay other creditors until the mortgagee's claim could be collected, or even that it might have the effect to deprive other creditors of a means of obtaining payment of their claims, was not sufficient to constitute the act of bankruptcy charged, if the mortgage was given in good faith to secure the payment of an honest debt. Section

3, subdivision 1, must have the same construction as the statute of Elizabeth. An actual intent to hinder, delay, and defraud other creditors more than is necessary to secure the preferential payment of the debt of the mortgagee is essential to the act of bankruptcy there described." *Johnson-Baillie Shoe Co. v. Beardsley*, (C. C. A. 8th Cir. 1916) 237 Fed. 763, 150 C. C. A. 517.

Concealment of property.—Where it appeared that an alleged bankrupt, in response to an inquiry by a creditor, as to what he had done with certain money collected by him, replied that he had it in a safe place, and that it was available on a settlement but that he had offsets amounting to more than petitioner's claim, it was held that this amounts to a concealment of property and is an act of bankruptcy. *In re Burg*, (N. D. Tex. 1917) 245 Fed. 173.

Burden of establishing intent.—Creditors alleging that a chattel mortgage was an act of bankruptcy within the meaning of this clause have the burden of proving the bad faith and evil intent which they charge. *Johnson-Baillie Shoe Co. v. Bardsley*, (C. C. A. 8th Cir. 1916) 237 Fed. 763, 150 C. C. A. 517.

The filing of a petition in a state court by an individual stockholder acting on his own behalf, and who is also the president and director and owner of a majority of the capital stock, to which answer is filed is not an act of bankruptcy under this section. *In re Valentine Bohl Co.*, (C. C. A. 2d Cir. 1915) 224 Fed. 685, 140 C. C. A. 225.

Confessing judgment.—Confession of a judgment thus creating a lien on real estate through which a sale can be effected is a transfer within the meaning of this clause. *In re Irish*, (E. D. Pa. 1916) 238 Fed. 411.

Validity of mortgage—State laws.—The question as to the validity of a mortgage alleged as an act of bankruptcy within the terms of this clause is to be determined by the laws of the state where the property is situated and the mortgage made, and if not invalid there will not be considered as an act of bankruptcy as here provided. *Johnson-Baillie Shoe Co. v. Bardsley*, (C. C. A. 8th Cir. 1916) 237 Fed. 763, 150 C. C. A. 517.

Vol. I, p. 544, sec. 3a (2).

Distinction in cases covered by subdivisions a (2) and a (3).—"Upon consideration it is concluded that while a preference effected through judicial proceedings may fall within one class or the other, the two provisions do not necessarily overlap. The distinction is to be found in the presence or absence of an intent on the part of the debtor to give a preference, and by intent is meant an actual, and not merely a constructive, in-

tent. If the debtor has acted in such a way as to give a preference with the intent and purpose so to do, it is quite immaterial by what means such purpose is accomplished, whether by judicial proceedings or in some other manner. In such case the act falls within a (2). Upon the other hand, if, through legal proceedings, a preference has in fact been permitted or procured, but without any intent or purpose on the part of the debtor to give it, then the act falls within the terms of subdivision a (3)." *In re Musgrove Min. Co.*, (D. C. Idaho 1916) 234 Fed. 99.

Receivership suit in state court—Estoppel.—Where a receiver has been appointed in proceedings in a state court in which a dividend has been declared and the receivership proceeding practically concluded creditors who have received dividends thereunder are estopped from asserting in a subsequent proceeding in bankruptcy not only any claim to an adjudication on the ground of the appointment of the receiver constituting an act of bankruptcy but also on the ground of a preferential payment constituting such an act. *Ohio Motor Car Co. v. Eise-man Magneto Co.*, (C. C. A. 6th Cir. 1916) 230 Fed. 370, 144 C. C. A. 512.

Failure to release levy of attachment.—The failure of an alleged bankrupt to release the levy of an attachment upon his supposed interest in property transferred by him nearly seven years previously has been held not to constitute an act of bankruptcy, even though it be alleged that such transfer was a fraudulent one. Nor can it appear that such attaching creditor will obtain a preference until such sale has been determined to be fraudulent in an action to which the transferee is a party. *In re Murphy*, (N. D. Cal. 1914) 228 Fed. 1018.

Confession of judgment.—Confession of a judgment, thus creating a lien on real estate, through which a sale can be effected is a transfer within the meaning of this clause. *In re Irish*, (E. D. Pa. 1916) 238 Fed. 411.

Vol. I, p. 549, sec. 3a (3).

Subdivision a (2) distinguished.—See note under section 3a (2), *supra*, this page.

Elements of preference.—The preference, which is an act of bankruptcy, is only an execution levy or analogous lien which has been "suffered or permitted" to come into existence and which is allowed to continue until five days before the execution sale. *Golden Hill Distilling Co. v. Logue*, (C. C. A. 6th Cir. 1917) 243 Fed. 342, 156 C. C. A. 122.

Lien obtained beyond four months' period.—Failure to discharge valid liens acquired through legal proceedings more than four months prior to the filing of the petition in bankruptcy does not con-

stitute an act of bankruptcy under this section. *In re Superior Jewelry Co.*, (C. C. A. 2d Cir. 1917) 243 Fed. 368, 156 C. C. A. 148.

The statute does not contemplate that the judgment obtained by a diligent creditor prior to the four months period, and the lien obtained likewise prior to the four months period, should be defeated merely because it was not possible to have the sale take place earlier than some date which fell within the four months period. *In re Superior Jewelry Co.*, (S. D. N. Y. 1916) 239 Fed. 373.

Vol. I, p. 555, sec. 3a (4).

- I. Assignment for benefit of creditors.
- II. Appointment of receiver or trustee.

I. ASSIGNMENT FOR BENEFIT OF CREDITORS (p. 556)

In general.—Under the Bankruptcy Act an assignment for the benefit of creditors is in itself an act of bankruptcy. The assignment remains valid, unless and until an adjudication in bankruptcy is made. It is properly regarded as potentially a fraud upon the Bankruptcy Law and upon the creditors, since its necessary effect would be to defeat the operation of the Bankruptcy Law and to deprive creditors of the protection that that law affords them and the provisions it makes for a speedy and equal distribution of the estate. *In re Neuburger*, (C. C. A. 2d Cir. 1917) 240 Fed. 947, 153 C. C. A. 633.

"The attempt of a debtor through the operation of a general assignment for the benefit of creditors to place his property out of the reach of his creditors, even for the laudable purpose of assuring to them the ultimate payment of their claims, constitutes in itself an act of bankruptcy irrespective of a question of solvency." *In re Utley*, (E. D. Pa. 1916) 235 Fed. 905.

Form of assignment.—The assignment need not be formal, and it is not even necessary that it should be valid for all purposes. *In re Matthews*, (D. C. N. J. 1916) 229 Fed. 309, *affirmed* (C. C. A. 3d Cir. 1916) 236 Fed. 539, 149 C. C. A. 591.

"A general assignment, within the meaning of the cited provision of the Bankruptcy Act, embraces any act by the alleged bankrupt having the effect of a conveyance of all its property and an appropriation of it to raise funds to pay its debts, share and share alike. The name and form which the transaction assumes are not material." *Moody-Hormann-Boel-hauwe v. Clinton Wire Cloth Co.*, (C. C. A. 5th Cir. 1917) 246 Fed. 653, 158 C. C. A. 609.

So the execution of an instrument which, though not in terms yet in legal

effect is an assignment is an act of bankruptcy under this section. *Anders v. Latimer*, (Ala. 1917) 73 So. 925.

It has been held quite uniformly that the general assignment here contemplated is to be taken in its generic sense, and embraces any conveyance, at common law or by statute, by which one intends to make an absolute and unconditional appropriation of all his property to pay his creditors, share and share alike. *In re Matthews*, (D. C. N. J. 1916) 229 Fed. 309, *affirmed* (C. C. A. 3d Cir. 1916) 236 Fed. 539, 149 C. C. A. 591.

And it is immaterial whether such general assignment is voluntary or statutory. *In re Berthoud*, (S. D. N. Y. 1916) 231 Fed. 529.

Extent of assignment.—An absolute transfer by the debtor of both the legal and equitable titles is indispensable. *In re Matthews*, (D. C. N. J. 1916) 229 Fed. 309, *affirmed* (C. C. A. 3d Cir. 1916) 236 Fed. 539, 149 C. C. A. 591.

Place of assignment.—It is immaterial whether such a general assignment is made within or without the United States, and the statute evidently contemplated that wherever a person made such a general assignment, the act was an act of bankruptcy. *In re Berthoud*, (S. D. N. Y. 1916) 231 Fed. 529.

And where the assignment is alleged to have occurred in another country it is immaterial that under the laws of that jurisdiction an act of bankruptcy must have occurred within three months before the presentation of the petition by creditors. *In re Berthoud*, (S. D. N. Y. 1916) 231 Fed. 529.

Deed of trust.—The execution of a deed of trust which is placed with an attorney to be held in escrow to be delivered in the event that all the creditors should consent to the agreement which had been entered into by the advisory board and has not been delivered to the trustee is not an act of bankruptcy under this section. *Carpenter v. Lybrand*, (C. C. A. 4th Cir. 1915) 230 Fed. 84, 144 C. C. A. 382.

Where it appears that the creditors of an alleged bankrupt had been receiving payments on their debts in pursuance of an agreement, and that within 90 days all the creditors would be paid in full, this was declared to be sufficient to show that it was not the purpose of the debtor in executing a deed of trust to in any wise hinder, delay, or prevent his creditors from collecting the debts which he owed. *Carpenter v. Lybrand*, (C. C. A. 4th Cir. 1915) 230 Fed. 84, 144 C. C. A. 382.

Deed of assignment.—The execution of a deed of assignment of property directing the sale thereof and, from the proceeds, the payment of mortgages thereon in the

order of their priority and the balance to the general creditors of the assignor, is an act of bankruptcy. *In re Cutler*, (E. D. N. C. 1916) 228 Fed. 771.

Power of attorney.—A mere power of attorney does not operate as in general assignment under this section. *In re Matthews*, (D. C. N. J. 1916) 229 Fed. 309, *affirmed* (C. C. A. 3d Cir. 1916) 236 Fed. 539, 149 C. C. A. 591.

No defense is possible to a general assignment as an act of bankruptcy. *In re Federal Mail, etc., Co.*, (S. D. N. Y. 1916) 233 Fed. 691.

II. APPOINTMENT OF RECEIVER OR TRUSTEE (p. 558)

In general.—An application by an insolvent debtor for the appointment of a receiver or trustee is an act of bankruptcy. *In re McKinnon Co.*, (E. D. N. C. 1916) 237 Fed. 869.

It is not every receivership, even though to finally administer a debtor's assets, or that results in finally administering an insolvent debtor's assets, which is an act of bankruptcy, but those only are such acts as the Bankruptcy Act so declares. *In re Butte Duluth Min. Co.*, (D. C. Mont. 1915) 227 Fed. 334.

Trustee named by stockholders.—Where by a vote of the stockholders of a corporation it was dissolved and the directors were named as trustees to liquidate the affairs of the corporation as provided by the state law it was held that this was in the nature of an assignment which amounted to an act of bankruptcy although the action was taken by the stockholders. *Moody-Hormann-Boelhanne v. Clinton Wire Cloth Co.*, (C. C. A. 5th Cir. 1917) 246 Fed. 653, 168 C. C. A. 609.

Insolvency essential.—"The insolvency of the bankrupt company is an indispensable prerequisite to the exercise by this court of jurisdiction over the property now in the custody of the receiver of the state court." *In re Hargadine-McKittrick Dry Goods Co.*, (E. D. Mo. 1917) 239 Fed. 155.

Where the record of the receivership involved in the proceedings in a state court neither directly nor by implication makes it to appear that the debtor was insolvent within the meaning of the Bankruptcy Act—that is, that the aggregate of its property at a fair valuation was not sufficient in amount to pay its debts—it fails to show that because of insolvency as so defined a receiver was put in charge of respondent's property, and so fails to prove that respondent committed the act of bankruptcy under this section. *In re Butte Duluth Min. Co.*, (D. C. Mont. 1915) 227 Fed. 334.

"It was obviously not the purpose of Congress, in using the terms 'being in-

solvent,' or 'because of insolvency,' to have the same apply when the facts upon which a receiver was appointed only show that its assets would not bring enough to pay its debts at a forced sale, or where there was imminent danger of insolvency. The fact that respondent deemed it necessary to make application for the appointment of a receiver in order to enable it to secure temporary relief should not be used to its prejudice in a court of bankruptcy, unless it clearly appears upon the face of the complaint filed in the state court that respondent was insolvent within the meaning of the Bankruptcy Act at the date of the filing of the same." *Maplecroft Mills v. Childs*, (C. C. A. 4th Cir. 1915) 226 Fed. 415, 141 C. C. A. 245.

Vol. I, p. 561, sec. 3a (5).

Test of admission.—Where the written admission referred to in this section, is averred, it may be set up that the proceedings are the result of fraud and collusion between the bankrupt and the petitioners. The opposing creditors may not be able to deny the genuineness of the bankrupt's admission, but certainly they may still assert that even a genuine admission is in aid of a collusive scheme. Accordingly, if an amended answer sufficiently avers fraud and collusion between the bankrupts and the petitioning creditors, a proper issue is tendered that calls for disposal. *In re Cohn*, (C. C. A. 3d Cir. 1915) 227 Fed. 843, 142 C. C. A. 367.

Admission by corporation.—A corporation by filing a petition in bankruptcy commits an act of bankruptcy within the meaning of this section. Thus it was so held where the petition of the corporation set forth in full the resolution of the board of directors reciting that their company was then largely indebted and wholly unable to pay any of its indebtedness, all of which was long overdue, that it was involved in litigation and without funds with which to pay the necessary expense thereof, that it had "exhausted its ability to borrow money to procure funds for the care and preservation of its property," and declared that it was willing to be adjudged a bankrupt under the laws of the United States, and to surrender all of its property for the benefit of its creditors. *In re Southern Arizona Smelting Co.*, (C. C. A. 9th Cir. 1916) 231 Fed. 87, 145 C. C. A. 275; *Bell v. Blessing*, (C. C. A. 9th Cir. 1915) 225 Fed. 750, 141 C. C. A. 34.

Insolvency unnecessary.—It is settled that the question of solvency or insolvency is immaterial where the act of bankruptcy is written admission referred to in the statute. *In re Cohn*, (C. C. A. 3d Cir. 1915) 227 Fed. 843, 142 C. C. A. 367.

Vol. I, p. 564, sec. 3c.

Burden of proof.—The burden of proof is on the alleged bankrupt to show his solvency. *In re Burg*, (N. D. Tex. 1917) 245 Fed. 173.

Vol. I, p. 565, sec. 3e.

The amount of the bond fixes the extent of the liability of creditors and sureties. *In re Weissbord*, (D. C. N. J. 1917) 241 Fed. 516.

Vol. I, p. 566. [Allowance of costs, damages, etc.]

Costs on dismissal of petition.—This provision as to costs, damages, etc., relates to the dismissal of a petition for seizure of property, before adjudication, as by receivership, and has nothing to do with the awarding of costs upon a mere dismissal of the petition. *In re National Carbon Co.*, (1917) (C. C. A. 6th Cir. 1917) 241 Fed. 330, 154 C. C. A. 210.

The court has jurisdiction to fix costs and assess damages occasioned by the seizure and detention of the debris property by the receiver though the petition for adjudication has been dismissed. *In re Weissbord*, (D. C. N. J. 1917) 241 Fed. 516.

Amount of recovery.—The liability of bondsmen under this section is limited to such costs, expenses, and damages as were incident to the taking and withholding of the property, and no recovery can be had as against the bondsmen for costs or expenses incurred in meeting the issue and resisting the petition in bankruptcy. *In re Terusaki*, (W. D. Wash. 1916) 238 Fed. 934.

Counsel fees.—Under this section if an alleged bankrupt sees fit to procure the release of his property from the seizure by seeking a dismissal of the petition for adjudication, rather than by an independent proceeding, he cannot be compensated for the expenses and counsel fees which he thus incurred. *In re Weissbord*, (D. C. N. J. 1917) 241 Fed. 516.

Vol. I, p. 568, sec. 4a.

Validity and purpose.—The Bankruptcy Act recognizes the right of the bankrupt to make a voluntary assignment of his property, with the purpose of avoiding attachments, and thereby securing an equal distribution of his property among all his creditors, and it cannot be predicated of such a proceeding that its purpose is to defraud the attaching creditors. *Bell v. Blessing*, (C. C. A. 9th Cir. 1915) 225 Fed. 750, 141 C. C. A. 34.

Corporations.—This section extends to a corporation not within the exceptions the same privilege of becoming a voluntary bankrupt as to an individual, and there exists no good reason why it may

not become such a bankrupt in the same way. It is not necessary for such a petitioner, praying adjudication, that he show that he owes debts which he is unable to pay in full, and that he is willing to surrender his property for the benefit of his creditors. *Bell v. Blessing*, (C. C. A. 9th Cir. 1915) 225 Fed. 750, 141 C. C. A. 34.

A subordinate lodge of Odd Fellows organized and existing under the laws of the state of New York is a corporation and entitled to the benefits of this provision. *In re Carthage Lodge, etc.*, (N. D. N. Y. 1916) 230 Fed. 694.

A farmer may institute voluntary proceedings in bankruptcy and a state court is therefore without jurisdiction over a voluntary proceeding in insolvency by a farmer. *Pitcher v. Standish*, (1916) 90 Conn. 601, 99 Atl. 93, L. R. A. 1917A 105.

Vol. I, p. 569, sec. 4b.

II. Statutory exceptions.

III. Natural persons.

IV. Corporations and unincorporated companies.

II. STATUTORY EXCEPTIONS (p. 570)**Date of status of statutory exceptions.**

—The question whether an insolvent is exempt, under this section, depends upon his status as to occupation at the time the acts of bankruptcy were committed. *Virginia-Carolina Chemical Co. v. Shell-horse*, (C. C. A. 4th Cir. 1915) 228 Fed. 493, 143 C. C. A. 493; *Harris v. Tapp*, (S. D. Ga. 1916) 235 Fed. 918.

Persons engaged chiefly in farming or the tillage of the soil.—*In general.*—These persons are not amenable to involuntary bankruptcy proceedings. *Harris v. Tapp*, (S. D. Ga. 1916) 235 Fed. 918; *Pitcher v. Standish*, (1916) 90 Conn. 601, 98 Atl. 93, L. R. A. 1917A 105.

For an extended statement of facts under which a person was held to be "engaged chiefly in farming" and not subject to adjudication as a bankrupt, see *Harris v. Tapp*, (S. D. Ga. 1916) 235 Fed. 918.

Farming and tillage.—"The word 'farming' and the words 'tillage of the soil' mean the same thing." *Hart-Parr Co. v. Barkley*, (C. C. A. 8th Cir. 1916) 231 Fed. 912, 146 C. C. A. 109; *In re Spengler*, (S. D. Ia. 1916) 238 Fed. 862.

The business of threshing grain for others for hire is not farming. *Hart-Parr Co. v. Barkley*, (C. C. A. 8th Cir. 1916) 231 Fed. 913, 146 C. C. A. 109.

Distinction between exemption of farmer and wage earner.—"A farmer is exempt from involuntary proceedings, whatever his other interests, if farming is his chief occupation; a wage-earner is exempt only

when he actually pursues the calling which that term describes. The farmer works for himself; the wage-earner is an employee, and this implies service for another which is substantially exclusive. This characteristic difference between the two classes is clearly recognized in the language of section 4b." *Virginia-Carolina Chemical Co. v. Shellhorse*, (C. C. A. 4th Cir. 1915) 228 Fed. 493, 143 C. C. A. 75.

Wage earner—Burden of proof.—The burden of proof is on the petitioners to show that a person was not a wage earner when the acts of bankruptcy were committed. *Virginia-Carolina Chemical Co. v. Shellhorse*, (C. C. A. 4th Cir. 1915) 228 Fed. 493, 143 C. C. A. 75.

This burden was held to be sustained by the presumption arising from years of nonexempt occupation, from the apparent continuance of that occupation down to a later period, and from other facts and circumstances tending to identify him as a manufacturer and trader. *Virginia-Carolina Chemical Co. v. Shellhorse*, (C. C. A. 4th Cir. 1915) 228 Fed. 493, 143 C. C. A. 75.

Jurisdiction under state laws over excepted classes.—The state insolvency laws remain in force as to classes of persons expressly excepted from the operation of the federal Act, and classes which these provisions do not reach; and the same rule should apply to classes of cases not within the scope of the federal Act. So the provision that a farmer cannot be adjudged a bankrupt in involuntary proceedings leaves that field open to state action, and a state court may have jurisdiction of involuntary proceedings against farmers under a state Act. *Pitcher v. Standish*, (1916) 90 Conn. 601, 98 Atl. 93, L. R. A. 1917A 105.

III. NATURAL PERSONS (p. 573)

Private bankers are amenable to involuntary bankruptcy. *In re Sage*, (E. D. Mo. 1915) 224 Fed. 525.

IV. CORPORATIONS AND UNINCORPORATED COMPANIES (p. 574)

Insurance corporations—Fraternal benefit societies.—In the case of *In re Grand Lodge*, etc., (N. D. Cal. 1916) 232 Fed. 199, it was held that a fraternal benefit society is not an insurance corporation within the meaning of the bankrupt law.

"Unincorporated company—Construction and scope of word 'company'.—Whatever may be the full scope of the word 'company,' it does include at least any unincorporated association or group of individuals whose object and purpose are either wholly or chiefly of the same kind as the object and purpose of a moneyed business, or commercial corpo-

ration." *In re Order of Sparta*, (C. C. A. 3d Cir. 1917) 242 Fed. 235, 155 C. C. A. 75, *affirming* (E. D. Pa. 1916) 238 Fed. 437.

An unincorporated fraternal beneficial association has been held to be a company within the meaning of this section. *In re Order of Sparta*, (C. C. A. 3d Cir. 1917) 242 Fed. 235, 155 C. C. A. 75, *affirming* (E. D. Pa. 1916) 238 Fed. 437.

Vol. I, p. 578, sec. 4b. [*Liability of officers and stockholders of corporations.*]

The express provision of the Bankruptcy Act specifically forbids that the bankruptcy of a corporation shall not release its officers or directors from any liability under the laws of a state, territory or United States. *In re United Grocery Co.*, (S. D. Fla. 1917) 239 Fed. 1016.

Vol. I, p. 578, sec. 5a.

Adjudication of partnerships as bankrupts, in general.—"The statute provides that a partnership may be declared bankrupt. A partnership is an entity to that extent. The statute does not impose the condition that the partners shall be declared bankrupt at the same time as the partnership. It is plain that the partnership may be declared a voluntary or involuntary bankrupt. There is no limitation in the statute in this regard. It is well settled that one partner may petition to have the partnership declared a voluntary bankrupt. It is undoubtedly necessary, except in certain cases, that the court should determine that the members of the partnership are insolvent; otherwise the partnership would not be bankrupt. Bankruptcy and insolvency are different things under the statute. There are many instances that could be stated that would defeat the statute authorizing a partnership to be declared bankrupt, if it were necessary before doing so to adjudicate the members thereof bankrupts. The language of the statute does not justify an inference that Congress meant that a partnership could not be declared bankrupt without adjudication of the partners to be bankrupt." *In re Hansley*, (S. D. Cal. 1916) 228 Fed. 564.

If the total assets of the firm and individuals will not suffice "to pay the partnership debts," the firm property and the individual properties may be administered in bankruptcy if the firm is insolvent and if the unadjudicated partner does not object, *i. e.*, consents thereto. *In re Kobre*, (E. D. N. Y. 1915) 224 Fed. 106.

Existence of partnership necessary.—In order to justify an adjudication that a person is bankrupt as a partner there must be evidence from which the court can properly find as a fact that such

person was a partner. "It would not be enough that to various creditors he had held himself out as a partner, because, while an estoppel might give rights to those who were misled, in order to give rights to all creditors he must have been in fact a partner." *In re Kaplan*, (C. C. A. 7th Cir. 1916) 234 Fed. 866, 148 C. C. A. 464.

Necessity of showing insolvency of members composing firm.—No firm can be compulsorily adjudicated a bankrupt in which any partner appears to be solvent to the extent of having a surplus of property over the debts for which he is personally liable and the debts for which he is liable as a member of the firm. *In re Kobre*, (E. D. N. Y. 1915) 224 Fed. 106.

Under the bankruptcy laws a firm may be bankrupt and the individual composing such firm solvent. Doubtless the members of the firm might be included with it in the petition, asking that all be found insolvent; but, before the individual members could be so found in involuntary bankruptcy one or more of the enumerated acts of insolvency must have been alleged and proven to have been committed by such members. And where no act of bankruptcy is charged against the members of a firm, and the proceedings are solely against the partnership as a legal entity, the individual members are not entitled to a discharge in bankruptcy. *Peterson v. Perego, etc., Co.*, (Ia. 1917) 163 N. W. 224.

Where there is no allegation of any act of bankruptcy committed by a nonjoining partner, there is no ground for adjudicating him a bankrupt. *In re Lenoir-Cross*, (E. D. Tenn. 1915) 226 Fed. 227.

Petition.—Where there is no prayer in the petition for an adjudication of the petitioners individually, the adjudication should be limited to that of the firm. And where an adjudication is desired of the petitioning partners as individuals as well as the firm, there should at least be inserted in the prayer of the petition a request for an adjudication of the petitioning partners as well as of the firm. *In re Lenoir-Cross*, (E. D. Tenn. 1915) 226 Fed. 227.

Who may petition.—It is well settled that one partner may petition to have the partnership declared a voluntary bankrupt. *In re Hansley*, (S. D. Cal. 1916) 228 Fed. 564.

Creditors.—There is only one method in the statute for the institution of an involuntary bankruptcy proceeding, namely, by the petition of a creditor or creditors, stating necessary jurisdictional facts. *In re Hansley*, (S. D. Cal. 1916) 228 Fed. 564.

Vol. I, p. 583, sec. 5c.

Jurisdiction.—When a person submits himself to the bankruptcy jurisdiction of

the District Court in the districts in which his partner is resident that court acquires jurisdiction of him and of his estate wheresoever situated for all purposes of bankruptcy. *Gretsch v. U. S.*, (C. C. A. 3d Cir. 1916) 231 Fed. 57, 145 C. C. A. 245.

Vol. I, p. 587, sec. 5f.

Distribution.—"From 1841 down to the present time, the several Bankruptcy Acts have so far recognized the doctrine of the separate entity of a firm as distinguished from its individual partners, as to specifically enforce in bankruptcy the equitable rule of distribution, generally recognized aliunde in the Federal courts, that the net proceeds of the partnership property are to be first appropriated to the payment of partnership debts; the individual estates of the partners, to the payment of their individual debts; and any surplus in either fund, to be applied to the other." *In re Nashville Laundry Co.*, (M. D. Tenn. 1917) 240 Fed. 795.

Reduction of claims to judgment.—"The reduction of their claims to judgment by the partnership creditors does not change the character of such indebtedness from a partnership debt to an individual debt, but changes the form of the debt only." *In re Hacker*, (N. D. Ia. 1915) 225 Fed. 869.

The reduction of partnership debts to judgment, in a state court, according to the local law against both the firm and the individual members, all being thereafter adjudged bankrupt, does not entitle the judgment creditor to primary participation in the distribution in the bankruptcy court of the individual estates. *Cutler Hardware Co. v. Hacker*, (C. C. A. 8th Cir. 1916) 238 Fed. 146, 151 C. C. A. 222.

Joint individual debts.—In construing these several Bankruptcy Acts giving partnership debts priority of payment out of partnership assets, it has been held by the Federal courts, from the beginning, that joint debts of the individual partners of a firm, not created in furtherance of the business of the firm or in its behalf or for a consideration passing to it, are merely the joint individual debts of the partners entitled to share in their individual assets, and are not partnership debts entitled to share as such in the distribution of the partnership property in bankruptcy proceedings. *In re Nashville Laundry Co.*, (M. D. Tenn. 1917) 240 Fed. 795.

Where two members of a firm execute joint notes for property purchased by one of the makers and such purchase has no connection with the partnership business, the holders are not entitled to participate in the administration of the partnership assets in bankruptcy proceedings. *In re Nashville Laundry Co.*, (M. D. Tenn. 1917) 240 Fed. 795.

Partnership and individual insolvency.—When a partnership as such is insolvent, and when each individual member is also insolvent, and when the only fund for distribution is produced by the individual estate of one member, the individual creditors of such member are entitled to priority in the distribution of the fund. *Farmers', etc., Nat. Bank v. Ridge Ave. Bank*, (1915) 240 U. S. 498, 36 S. Ct. 461, 60 U. S. (L. ed.) 767, L. R. A. 1917A 135.

In case of a bona fide dissolution of a partnership where the firm property has been transferred by the retiring partner to his copartner, the bankrupt, a considerable period of time before the filing of the petition, it has been held that a creditor of the firm has no rights, in preference to the trustee, to a fund derived from a sale of the property of the bankrupt. *In re Zartman*, (M. D. Pa. 1917) 242 Fed. 595.

Firm creditors are entitled to be first paid out of the firm assets. *In re Stringer*, (E. D. N. Y. 1916) 234 Fed. 454.

Pro rata distribution between firm and individual creditors.—As to the rights of individual creditors to such a distribution, under section 36 of the prior Bankruptcy Act, the current of opinion was that where there is no partnership estate and no solvent partner, partnership creditors were entitled to share ratably with individual creditors in the individual assets of the bankrupt partner. But under the present law the greater authority is to the point that no such exception should be recognized, but that the distribution should follow strictly the language of the Act. *In re Hull*, (N. D. Ohio 1915) 224 Fed. 796.

Selection of trustee.—Where the record of the first meeting of creditors, after giving the title of the cause and reciting that, "this being the time and place for the first meeting of creditors in the above matter in bankruptcy," states that creditors appeared by a person who, having a majority of claims in number and amount of those presented for approval, nominated and elected the plaintiff as trustee, and it is not shown that the trustee was selected wrongfully, and the record contains no intimation that the trustee was elected by persons who were not creditors of the partnership the recital of the appointment sufficiently shows in an action by the trustee to recover an alleged preference, especially in the absence of any evidence to the contrary, that the trustee of the partnership, the recital of the ap- full compliance with this section. *Anderson v. Stayton State Bank*, (1916) 82 Ore. 357, 159 Pac. 1033.

Vol. I, p. 590, sec. 5g.

Marshaling assets.—This section relates to the marshaling of assets between the partnership estate and individual es-

tates of the partners. *In re Cobb's Consol. Cos.*, (D. C. Mass. 1916) 233 Fed. 458.

Proof of claims—Jurisdiction.—"It is settled that where a partnership is declared bankrupt on a ground involving its insolvency, although one or more, but not all, of the individual member are declared bankrupt, the effect of the adjudication is to draw to the jurisdiction and administration of the bankruptcy court the separate estates of all the partners as well as the partnership estate." *Ft. Pitt Coal, etc., Co. v. Diser*, (C. C. A. 6th Cir. 1917) 239 Fed. 443, 152 C. C. A. 327.

Firm creditors.—The general rule is that firm creditors are not entitled to receive dividends from the separate estates of the partners until separate creditors have been paid in full. *International Agricultural Corp. v. Cary*, (C. C. A. 6th Cir. 1917) 240 Fed. 101, 153 C. C. A. 137.

Insolvent partners of an insolvent partnership cannot rightfully devote the whole of their separate estates to the benefit of a single firm creditor under the guise of treating him as their private creditor, and so ignore their joint and several liability to all the firm creditors. *Ft. Pitt Coal, etc., Co. v. Diser*, (C. C. A. 6th Cir. 1917) 239 Fed. 443, 152 C. C. A. 321.

Vol. I, p. 591, sec. 5h.

When section applies.—This section is limited in its effect to cases in which the partnership is not adjudicated bankrupt and one or more, but not all, the members are so adjudicated. So where a partnership composed of two members and one of the members are adjudicated bankrupt, and the other member is not so adjudicated, the bankruptcy court may draw to itself and administer the property of the latter to the extent necessary to pay the debts of the partnership. *Armstrong v. Fisher*, (C. C. A. 8th Cir. 1915) 224 Fed. 97, 139 C. C. A. 653.

Vol. I, p. 592, sec. 6a.

- I. Constitutionality and construction.
- II. Claiming exemption.
- III. Matters affecting right to exemption.
- IV. Recognition of state and federal exemption laws.

I. CONSTITUTIONALITY AND CONSTRUCTION (p. 593)

Construction.—The exemption laws should receive a construction comporting with the spirit which prompted their enactment and there should be no attempt by the courts to defeat an exemption by niceties in practice. *In re Lenters*, (D. C. Pa. 1915) 225 Fed. 878; *In re Opava*, (D. C. Ia. 1916) 235 Fed. 779.

And it is said in another case: "These exemption sections are to be liberally construed with a view of accomplishing the humane purpose for which they were enacted. The homestead exemption, it is said, is not given for the benefit of the debtor, but for the protection of his family, and in part for the protection of the public who might otherwise be burdened with the partial support of an insolvent debtor's family. In construing and applying these sections the Ohio Supreme Court has extended their protection, whenever the law or the facts brought a case within the policy and reason thereof." *In re Hewit*, (N. D. Ohio 1917) 244 Fed. 245.

Purpose of exemption laws.—The purpose behind the enactment of exemption laws is to secure some measure of protection to those to whom a man may owe a legal or moral obligation to furnish a living, in case misfortune or insolvency should come. *In re Opava*, (N. D. Ia. 1916) 235 Fed. 779.

II. CLAIMING EXEMPTIONS (p. 593)

Time and manner of claiming.—See to same effect as original annotation. *In re Lenters*, (D. C. Pa. 1915) 225 Fed. 878.

The schedules of the bankrupt must contain his claim of exemptions, and the trustee is required to set apart the bankrupt's exemptions and to report to the court as to the exemptions so set apart. *In re Brincat*, (S. D. Ala. 1916) 233 Fed. 811.

Claiming specific property.—Whether a specific item of property should go to creditors or be reserved by the bankrupt, it is not for him to constitute himself the judge; but it is his duty to dissolve the transaction, that the bankrupt court may determine the right. *In re Brincat*, (S. D. Ala. 1916) 233 Fed. 811.

Amendment of schedules.—See to same effect as original annotation. *In re Radcliffe*, (D. C. Ohio 1917) 243 Fed. 716; *In re Hewit*, (N. D. Ohio 1917) 244 Fed. 245.

While the allowance of an amendment is said to be a matter of grace, the allowance of a claim for exemption is a matter of substantial right, and if, by refusing to allow the amendment, the bankrupt is denied a right which the courts should be astute to recognize and allow, he has gone beyond matters of grace, upon which discretion may be properly exercised, and denied the bankrupt a substantial right, which has not been expressly waived by him, and which he should not be estopped from asserting by reason of any conduct disclosed in this record. *In re Lenters*, (E. D. Pa. 1915) 225 Fed. 878.

III. MATTERS AFFECTING RIGHT TO EXEMPTION (p. 596)

Fraud.—Ordinary creditors have no interest in exempt property. Its transfer,

even with a purpose to hinder, delay, or defraud them, is not therefore an act of which they can justly complain. *In re Ziff*, (M. D. Ala. 1915) 225 Fed. 323.

Where mercantile statements as to assets and schedules subsequently filed, make out in favor of the creditors a prima facie case of concealment on the part of the bankrupt, the burden is cast upon the bankrupt, either to show that the statements were false when made, or else to explain what became of his assets; otherwise, the conclusion would follow that he was concealing a part of his assets. *In re Powell*, (S. D. Ga. 1916) 230 Fed. 316.

The fraud of the bankrupt has been held in Alabama not to disentitle him to his exemptions, even in property fraudulently transferred, when recovered by the creditors. *In re Ziff*, (M. D. Ala. 1915) 225 Fed. 323.

In some jurisdictions under the statute there in force a bankrupt loses his exemption in case of a fraudulent concealment of a part of his property from his creditors. In such cases in order, therefore, to determine the question whether the bankrupt should be allowed his exemption or not, it is necessary to ascertain whether the bankrupt made a full and fair disclosure of all his personal property, or was guilty of wilful fraud in the concealment of a part of his property from his creditors under the state statute. *In re Hardy*, (S. D. Ga. 1916) 229 Fed. 825.

Homestead exemption.—The failure of a bankrupt to make a full and fair disclosure of all the property owned by him at the time of the filing of his petition will defeat his right to his homestead exemption. *In re Hadden*, (S. D. Ga. 1917) 242 Fed. 284.

Evidence explaining shortage of goods as bearing on right to exemption.—Where a bankrupt attempts to explain a shortage of goods for the purpose of claiming an exemption the measure of proof applicable is that which obtains in civil cases, and not that necessary in cases of contempt for disobedience of an order to surrender. *In re Aronson*, (N. D. Ala. 1916) 233 Fed. 1022.

Lien against homestead.—"Congress cannot destroy the plaintiff's lien against the homestead by the Bankruptcy Act." *Watters v. Hedgepeth*, (1916) 172 N. C. 310, 90 S. E. 314.

Abandonment.—It is to be kept in mind always that, whenever land shall have had impressed upon it the homestead character, its abandonment as homestead must be beyond doubt before the homestead protection will be refused. There must be an unequivocal and absolute intention to abandon; and, in most cases, the inference of abandonment will not be indulged in the absence of the acquisition of a new homestead." *Woodward v. Sanger*, (C. C. A. 5th Cir. 1917) 246 Fed. 777, 159 C. C. A. 79.

Waiver.—The right to claim exemption to a bankrupt, the distinction between firm and individual property in the administration of a bankrupt estate is to be determined as a matter of general law in the federal courts, irrespective of the views of the state court of the bankrupt's domicile, in equity or under insolvency acts. *In re Turnock*, (C. C. A. 7th Cir. 1916) 230 Fed. 985, 145 C. C. A. 179.

Homestead exemptions.—The rule set forth in the original annotation that the allowance of exemptions under the Bankruptcy Law is governed by the state statutes applicable thereto, has been applied to homestead exemptions.

Georgia.—A bankrupt who does not include property in his schedules which should have been included is not entitled to a homestead exemption where the state law provides that a debtor shall forfeit his right to the exemption allowed by law if he is guilty of fraud in concealing from his creditors any part of his property at the time he seeks the benefit of the exemption. *In re Anderson*, (N. D. Ga. 1915) 224 Fed. 790.

A claim of a homestead exemption has been denied where it was shown that the creditor sought to avail himself of the statute allowing it to enable him to pay a debt and thus prefer a creditor to whom, as well as to several other creditors, he had given a note with a waiver of homestead attached. *In re Anderson*, (N. D. Ga. 1915) 224 Fed. 790.

Iowa.—Where there is no registration and record of a deed as required by statute, within the four months' period, it has been held that the deed is voidable as to the excess over the homestead right. *Sieg v. Greene*, (C. C. A. 8th Cir. 1915) 225 Fed. 955, 141 C. C. A. 79, Ann. Cas. 1917C 1006.

Ohio.—Where by statute a bankrupt who owns no homestead is entitled to an exemption out of his personal property, the latter exemption should be allowed where it appears that real estate owned by him and which was covered by mortgages in excess of its value has been conveyed by the trustee to the mortgagees. *In re Radcliffe*, (N. D. Ohio 1917) 243 Fed. 716.

Oklahoma.—In *Gregory v. Pritchard*, (C. C. A. 8th Cir. 1917) 240 Fed. 414, 153 C. C. A. 340, the following facts appeared: "About 11 months before the proceedings in bankruptcy were begun the bankrupt purchased a dwelling property in Oklahoma City for the declared purpose of occupying it as a home for himself and wife. At the time of purchase it was in possession of a third party under a lease for a year recently executed. The bankrupt had been informed that he could probably obtain possession and so made the purchase; but the tenant, upon being applied to by the bankrupt and by others in his behalf, finally declined to vacate the premises, or to let the bankrupt and his wife

IV. RECOGNITION OF STATE AND FEDERAL EXEMPTION LAWS (p. 601)

State law adopted.—To the same effect as the original annotation, see *Grattan v. Trego*, (C. C. A. 8th Cir. 1915) 225 Fed. 705, 140 C. C. A. 579; *Sieg v. Greene*, (C. C. A. 8th Cir. 1915) 225 Fed. 955, 141 C. C. A. 79, Ann. Cas. 1917C 1006; *Olmsted-Stevenson Co. v. Miller*, (C. C. A. 9th Cir. 1916) 231 Fed. 69, 145 C. C. A. 69; *Watters v. Hedgepeth*, (1916) 172 N. E. 310, 90 S. E. 314. See also *Olmsted-Stevenson Co. v. Langdorf*, (C. C. A. 9th Cir. 1916) 231 Fed. 76, 145 C. C. A. 264.

"The Bankruptcy Act does not create any personal or homestead exemptions in favor of the bankrupt. It merely preserves to the bankrupt the full benefit of such exemptions as at the time of the adjudication he is entitled to under the state law." *In re Hewit*, (N. D. Ohio 1917) 244 Fed. 245.

The bankrupt court can do nothing more than cause to be set apart to the bankrupt the property which the state law exempts from his debts. *Lockwood v. Exchange Bank*, (1903) 190 U. S. 294, 23 S. Ct. 751, 47 U. S. (L. ed.) 1061. Otherwise the trustee has nothing to do with exempt property." *In re Brown*, (W. D. Ky. 1915) 228 Fed. 533.

Distinction between firm and individual property.—While, by this provision the state law is controlling as to the character and amount of exemptions to be allowed

have a room in the house. The bankrupt made all reasonable efforts to obtain possession, but failed. He had no other homestead and no other real property. Between his purchase and the bankruptcy proceedings he painted the house, made some repairs on and about it, and pruned the fruit trees. In area and value this property was within the provisions of the Oklahoma Constitution as to homesteads." It was held that the bankrupt was entitled to a homestead exemption. *Gregory v. Pritchard*, (C. C. A. 8th Cir. 1917) 240 Fed. 414, 153 C. C. A. 340.

Oregon.—Where a statute provides for the exemption of a homestead limited in value and extent it was held that where the premises claimed by the bankrupt fell within the limitations of the statute the court was without discretionary power to refuse to set the exemption aside. *In re Barbe*, (C. C. A. 9th Cir. 1915) 225 Fed. 715, 140 C. C. A. 589.

Texas.—Where the law of a state provides that "the homestead, not in a town or city, shall consist of not more than 200 acres of land, which may be in one or more parcels, with the improvements thereon; . . . provided, also, that any temporary renting of the homestead shall not change the character of the same, when no other homestead has been acquired," it has been declared that where the head of a family owning several tracts not exceeding 200 acres in the aggregate, lives upon one of the tracts, and claims all as a homestead, the burden of proving one of the tracts not homestead should be upon the person attacking the homestead claim. The presumption should be that all is homestead. *Woodward v. Sanger*, (C. C. A. 5th Cir. 1917) 246 Fed. 777, 159 C. C. A. 79.

The bankrupt is entitled to the exemptions allowed to him by the state constitution. *In re Shrimer*, (E. D. N. D. 1916) 228 Fed. 794.

Growing and unmaturing crops.—When an order is made setting aside a homestead to a bankrupt, whether the homestead be exempt under the laws of the state or under the laws of the United States, the order of necessity carries with it all growing and unmaturing crops. *Olmsted-Stevenson Co. v. Miller*, (C. C. A. 9th Cir. 1916) 231 Fed. 69, 145 C. C. A. 69. See also *Olmsted-Stevenson Co. v. Longdorf*, (C. C. A. 9th Cir. 1916) 231 Fed. 76, 145 C. C. A. 264.

Partnership exemptions.—Where state laws allow no exemptions out of partnership assets, none can be claimed by bankrupts out of the property in the hands of the trustee and specifically identified as part of the former firm property which shortly prior to the filing of an involuntary petition to have the firm adjudged bankrupt, the members of the partnership, with knowledge of the insolvency, divided

among themselves for the purpose of enabling each of them to claim an exemption. *In re Turnock*, (C. C. A. 7th Cir. 1916) 230 Fed. 985, 145 C. C. A. 179.

Tools, implements of trade, etc.—Exemptions given bankrupts in their stock in trade, tools and fixtures are personal and cannot be claimed by a purchaser under a mortgage foreclosure sale of the property. *Feilbach Co. v. Russell*, (C. C. A. 6th Cir. 1916) 233 Fed. 412, 147 C. C. A. 348.

Milk cans, plows, harrows, cultivators, buzz saws, ice racks, hayracks, harness for team and team blankets are necessary working tools for a farmer. *In re French*, (N. D. N. Y. 1916) 231 Fed. 255.

Auto truck.—Under a Code provision exempting one dray or truck by the use of which a drayman, truckman, etc., habitually earns his living it was declared that without passing upon the question as to whether or no an auto truck would be exempt under any circumstances, it would not be where it does not appear that the petitioner habitually earned his living by the use of the truck in question. *In re Schumm*, (N. D. Cal. 1915) 232 Fed. 414.

Work cattle.—"Three yoke of work cattle and their yokes" by all common understanding means bovines and their yokes, and not equines and their harness. *Kennedy v. Hills*, (C. C. A. 9th Cir. 1916) 233 Fed. 666, 147 C. C. A. 474.

Wages.—Where a man is the head of a family his creditors have no interest in his wages which are exempt and he may do with them as he chooses. *In re Opava*, (N. D. Ia. 1916) 235 Fed. 779.

Wearing apparel—Jewelry.—A diamond finger ring valued at \$650 has been held not to be exempt. *Rivas v. Noble*, (C. C. A. 5th Cir. 1917) 241 Fed. 673, 145 C. C. A. 673.

City pension.—A pension payable by the city of New York to a bankrupt under charter provisions which permit the board of estimate and apportionment to retire "from active service" any officer, clerk, or employee who shall have been in the employ of the city of New York for a period of thirty years, and upwards, and who shall have become physically or mentally incapacitated for further performance of the duties of his position, and to award him an annual sum or annuity, to be fixed by such board, is not a vested right, but a bounty granted by the government through the municipality to encourage persons engaged in the public service. It can be recalled at will, and is not, therefore, an asset which passes to the trustee in bankruptcy. *In re Hoag*, (S. D. N. Y. 1915) 227 Fed. 478.

Life insurance.—Where at the time of the passage of an act exempting insurance policies on the life of a bankrupt ordinary creditors could have looked to the policies

for payment of their debts the act has no effect as to them. *In re Bonvillian*, (E. D. La. 1916) 232 Fed. 370.

But where a policy had no cash or surrender value when such an act was passed, and was not available as an asset, it was held that the bankrupt was entitled to the policy as against creditors whose debts had not come into existence at that time. *In re Rosenberg-Oldstein Co.*, (E. D. La. 1916) 236 Fed. 812.

Duty of trustee.—One of the first concerns of the trustee should always be promptly to set aside to the bankrupt any exempt property. If the real estate in which the homestead is claimed be indivisible, steps should be taken to have it sold. *In re Brown*, (W. D. Ky. 1915) 228 Fed. 533.

Vol. I, p. 612, sec. 7a (8).

I. Schedule of assets.

II. Schedule of creditors and liabilities.

I. SCHEDULE OF ASSETS (p. 612)

Sufficiency of schedule.—As to what should be included in the schedules it has been said: "It is not unusual to require a report of property which cannot be utilized by the trustee. For example, a bankrupt is required to report all the property which he claims is exempt, although all that can be done with it is to set it off to him. Again, he is required to report what portion of the bankrupt estate has passed under assignment for benefit of creditors, although, if it was more than four months before the bankruptcy, it cannot be recovered by the trustee. Other provisions might be cited, but this is sufficient for our purpose. In other words, the rule requires the reporting of much property that may or may not be held by the trustee that the courts may determine its liability for the payment of debts. Such determination is a part of the administration of the estate. *Pollack v. Meyer Bros. Drug Co.*, (C. C. A. 8th Cir. 1916) 233 Fed. 861, 147 C. C. A. 535.

Exempt property.—This section does not require that the bankrupt shall enumerate articles claimed as exempt, but only that the claim for such exemption as he may be entitled to shall appear in the schedules which he is required to file. A strict adherence to form is not necessary in order to obtain a substantial right of this nature in a court of bankruptcy. *In re Lenters*, (E. D. Pa. 1915) 225 Fed. 878.

A remainder, vested or contingent interest in land must be scheduled. *Pollock v. Meyer Bros. Drug Co.*, (C. C. A. 8th Cir. 1916) 233 Fed. 861, 147 C. C. A. 535.

II. SCHEDULE OF CREDITORS AND LIABILITIES (p. 614)

Sufficiency of schedule as to addresses.
—When there is a failure to state the cor-

rect residence of the creditor the debt is not duly scheduled, and hence not discharged by the decree in bankruptcy, unless it shall appear that the creditor had actual knowledge of the proceeding. *Horbach v. Arkell*, (1916) 172 App. Div. 566, 158 N. Y. S. 842.

Omission of street and number.—"Whether or not the use of initials and omission of street addresses are insufficient will almost invariably depend upon extrinsic circumstances. It is a matter of common knowledge that there are business concerns whose commercial names and places of business are known throughout the world of commerce. It would be a superfluous task to append street number address in such cases." *Claffin v. Wolff*, (1915) 88 N. J. L. 308, 96 Atl. 73.

General Order No. VIII—Schedule by nonjoinder partner.—Upon an adjudication of bankruptcy against a firm the non-joining partner may be required to file a schedule of his debts and an inventory of his property, in accordance with the concluding clause of the 8th General Order in Bankruptcy. *In re Lenoir*, (E. D. Tenn. 1915) 226 Fed. 227.

As the individual property of a partner, who resisted a petition to have the firm adjudicated a bankrupt, is subject to administration and application by the court of bankruptcy so far as necessary in order to pay in full the partnership debts he is required by General Order in Bankruptcy No. VIII (89 Fed. vi, 32 C. C. A. xi) to file a schedule of his debts and an inventory of his property within ten days after his adjudication in bankruptcy. *Armstrong v. Fisher*, (C. C. A. 8th Cir. 1915) 224 Fed. 97, 139 C. C. A. 653.

Incomplete schedule as affecting jurisdiction of referee.—Where it was objected on a hearing to confirm the report of the referee that he had no jurisdiction to proceed because the schedules were incomplete and the deposit did not cover all the existing claims, the court confirming the report of the referee said: "It is now urged by the objecting creditors that, upon it appearing that there were claims not scheduled, the referee lost jurisdiction until the schedules had been amended and a deposit made, or a waiver filed, to cover the added indebtedness. Sections 12a, 7a, 39a (2) and General Order 9 (89 Fed. vi, 32 C. C. A. xiii) are referred to in support of this contention. No decision on the point has been called to my attention. If such an objection can of right be insisted on by any creditor except those so omitted—which I doubt—I am of opinion that the sections and order mentioned do not so limit the general discretionary power of the court in matters of reference to and reports from referees as to prevent me from hearing and deciding the case on the present report of the referee, accompanied as it is by the evidence and exhib-

its before him." *In re Spiller*, (D. C. Mass. 1916) 230 Fed. 490.

Vol. I, p. 618, sec. 7a (9).

Scope and application.—This section applies to the bankrupt only, and does not protect the ordinary witness, whose rights must rest upon the general rules of law. *Knoell v. U. S.*, (C. C. A. 3d Cir. 1917) 239 Fed. 16, 152 C. C. A. 66.

Officers of a bankrupt corporation are included within this Act. *People v. Lay*, (1916) 193 Mich. 17, 159 N. W. 299.

Perjury.—The Bankruptcy Act, which requires the bankrupt to submit to an examination, does not permit him to give false testimony regarding his estate or property and its whereabouts or the disposition thereof, and then claim immunity from a prosecution for perjury committed while so testifying. *U. S. v. Coyle*, (N. D. N. Y. 1916) 229 Fed. 256.

Production of books and papers.—A bankrupt private banker may lose his right to object to the use of books and papers in a criminal prosecution against him by a failure to avail himself of the right afforded by the state law to obtain a restitution of the same within the period designated by such law. *In re Mandel*, (S. D. N. Y. 1915) 224 Fed. 642.

Vol. I, p. 624, sec. 8a. [*Not to abate proceedings.*]

Death as abating proceedings.—"Bankruptcy proceedings, once commenced, do not abate on the death of the alleged bankrupt, whether the proceeding be voluntary or involuntary and whether adjudication has been had, or not, at the time of such death." *In re Agnew*, (N. D. N. Y. 1915) 225 Fed. 650.

A proceeding to vacate a sheriff's sale, made after the death of the bankrupt, is properly brought by the trustee under this section. *Home Buyers' Bldg., etc., Ass'n v. Peterman*, (1916) 253 Pa. St. 418, 98 Atl. 619.

Vol. I, p. 625, sec. 8a. [*Dower and allowances for widow and children.*]

An assignment for the benefits of creditors within four months of an adjudication in bankruptcy does not affect the right, under this section, of the widow of the bankrupt. *In re Scott*, (C. C. A. 7th Cir. 1915) 226 Fed. 201, 141 C. C. A. 653.

Vol. I, p. 626, sec. 9a.

Arrest prior to institution of bankruptcy proceedings.—A judgment for a breach of contract of marriage, if not accompanied by seduction, is dischargeable in bankruptcy. Where a defendant was

arrested on execution against the person on such a judgment prior to the institution of a bankruptcy proceeding a writ of habeas corpus has been sustained. *In re Komar*, (N. D. N. Y. 1916) 234 Fed. 378. See also *Ex parte Marigiasso*, (S. D. N. Y. 1917) 242 Fed. 990.

Exemption from arrest.—In the case of an application to restrain the sheriff from levying a body execution upon the judgment debtor, in a state court pending the time within which an application for discharge could be made, the question of the discharge litigated, and the proceedings in bankruptcy carried on to a point where the bankrupt would not be harassed and interfered with in his bankruptcy proceedings by the process in the hands of the sheriff the court granted the motion for a definite period to be stated in the order when settled, in order to allow the bankrupt to apply to the state court for the appropriate remedy to bring up the question of the effect of his discharge. *In re Lockwood*, (E. D. N. Y. 1917) 240 Fed. 161.

Vol. I, p. 630, sec. 11a.

I. In general.

II. Discretion as to granting stay.

V. Where state court has complete jurisdiction.

I. IN GENERAL (p. 630)

In view of the paramount character of the Bankruptcy Law, the jurisdiction of the Bankruptcy Court, when properly invoked, is exclusive as respects the administration of the affairs of insolvent persons and corporations. The inhibition of R. S. sec. 720 against the issue of injunctions to stay proceedings in a state court, or to take possession of the property, distinctly excepts cases where the injunction is authorized by the Bankruptcy Law. *Ohio Motor Car Co. v. Eiseman Magneto Co.*, (C. C. A. 6th Cir. 1916) 230 Fed. 370, 144 C. C. A. 512.

Limitation of stay.—A stay under this section cannot delay the prosecution of a suit longer than the determination of the application for a discharge. The court can retain control of the bankrupt only to carry out the law and not to prevent litigation in courts which have jurisdiction to litigate. *In re Lockwood*, (E. D. N. Y. 1917) 240 Fed. 161.

Suit brought after petition filed.—This section does not in terms cover suits begun after the filing of the petition; but it is obvious that such suits, in so far as they interfere with the bankruptcy administration, are inconsistent with its exclusive jurisdiction, and it is settled that when they do interfere they will be enjoined. *In re Lavery*, (D. C. Mass. 1916) 235 Fed. 910.

II. DISCRETION AS TO GRANTING STAY (p. 631)

Stay discretionary.—To the same effect as original annotation, see *Smith v. Miller*, (1917) 226 Mass. 187, 115 N. E. 243.

Consideration of comity.—Where property is in the possession of a receiver appointed by the state court, an application for a stay therein should in the first instance, in obedience to the rule of comity, be presented to the state court, and it cannot be presumed that the application will be denied. *Ohio Motor Car Co. v. Eisenman Magneto Co.*, (C. C. A. 6th Cir. 1916) 230 Fed. 370, 144 C. C. A. 125.

V. WHERE STATE COURT HAS COMPLETE JURISDICTION (p. 636)

Mere interest of trustee.—A court of bankruptcy has no power to temporarily enjoin a sale of property of the bankrupt, proposed to be made by a state officer pursuant to a decree of a state court entered, before the petition in bankruptcy was filed, in proceedings to foreclose a valid mortgage, which was executed more than four months prior to the adjudication in bankruptcy, when the only reason why the stay is sought is to permit the trustee to attempt to secure a purchaser and to advertise the proposed sale more extensively than has been done by the state officer, and thus possibly realize more for the general creditors. *In re Schmidt*, (D. C. N. J. 1915) 224 Fed. 814.

Assets unaffected.—Where a bankrupt is not entitled to a discharge because of a prior discharge within six years he cannot have the suits of creditors in a state court stayed where the assets in the custody of the Bankruptcy Court will in no wise be affected thereby. *In re Johnson*, (S. D. Ala. 1916) 233 Fed. 841.

Supplementary proceedings.—Though an order in supplementary proceedings is stayed by the order adjudging the defendant a bankrupt for the period of twelve months, pursuant to the provision of this section, the proceeding, however, is not superseded and can be continued at any time one year from the adjudication. *Taylor v. Buser*, (1917) 167 N. Y. S. 887.

Vol. I, p. 643, sec. 11d.

Construction.—This section must be construed with section 2, subd. 8, which invests the court of bankruptcy with the power to close estates, whenever it appears that they have been fully administered, by proving the final accounts and discharging the trustees, and to reopen them whenever it appears that they were closed before being fully administered. *Duncan v. Watson*, (Ala. 1916) 73 So. 448.

Time within which trustee may sue.—In an action in a state court it has been held that where the statute of limitations has not run on an action by a trustee in bank-

ruptcy on promissory notes held by the bankrupt, owing to the fact that the Bankruptcy Act suspends the running of the statute in favor of such trustee, a recovery is not barred by laches because the action was delayed more than seven years, for an action at law timely brought with respect to the statute of limitations cannot be deemed barred by mere laches without evidence of estoppel. *Oppenheimer v. Roberts*, (1916) 175 App. Div. 424, 161 N. Y. S. 1048.

Vol. I, p. 643, sec. 12a.

Effect of section.—This section provides a method whereby the expense of preserving and conducting the business of an estate pending action on the composition may become part of the expenses of administration, in case composition is finally denied and adjudication made, and, impliedly at least, negative the idea that such expenses may become part of the expenses of administering the estate where the defendant, without invoking the action of the court, in the prescribed manner, voluntarily and on its own sole motion continues the conduct of its business. *In re Kinnane Co.*, (C. C. A. 6th Cir. 1917) 242 Fed. 769, 154 C. C. A. 357.

Theory of composition agreement.—“The fundamental theory and purpose of a composition agreement is that all creditors shall be treated alike, and that none shall have any advantage, secret or otherwise, over the other.” *In re Gordon*, (S. D. N. Y. 1917) 245 Fed. 905.

Composition after discharge.—The fact that a dividend has been paid to creditors and the bankrupt has applied for and received his discharge does not preclude the bankrupt from making an offer of composition. *In re Spiller*, (D. C. Mass. 1916) 230 Fed. 490.

The schedules filed by the bankrupt are binding upon him in the absence of fraud or mistake. *In re Aarons*, (D. C. N. J. 1917) 243 Fed. 634.

Vol. I, p. 645, sec. 12b.

Application for confirmation.—Where, from a financial standpoint, an offer of composition is in the best interest of creditors and it would be an undue hardship on a bankrupt if the composition agreement should fail a new application to confirm the agreement may be made after an arrangement, by reason of which a confirmation was refused, has been nullified. *In re Gordon*, (S. D. N. Y. 1917) 245 Fed. 905.

Withdrawal of claim by creditor.—“There is nothing in this section which prevents a creditor from withdrawing a claim at any time he pleases, provided, of course, such withdrawal is in good faith and without fraud or other wrongful

agreement or means." *In re Gordon*, (S. D. N. Y. 1917) 245 Fed. 905.

Deposit—Generally.—"The 'consideration to be paid by the bankrupt to his creditor's may or may not be cash. A bankrupt usually does not have enough ready money of his own to carry out a composition. The 'consideration to be paid' may be the bankrupt's notes, secured or even wholly unsecured, or his mere promise to pay in the future a given amount. . . . It is common knowledge that compositions sometimes contemplate the taking by creditors of stock or securities under a reorganization. . . . It is, we think, also clear that such 'consideration' need not be actually deposited with the court. True, the statute requires that it 'be deposited in such place as shall be designated by and subject to the order of the judge,' thus plainly permitting a deposit of notes or other evidences of debt, secured or unsecured, with any approved depository. But this deposit is for the sole benefit of the creditors concerned, and there can, we think, be not doubt of the power of such creditors to waive actual deposit of money or securities." *Kinkead v. Bacon*, (C. C. A. 6th Cir. 1916) 230 Fed. 362, 144 C. C. A. 504.

Where an offer of composition is made before the year is up it is regarded as made to all those who are shown on the schedules, including those who may not prove till after the year is past, and the bankrupt must deposit a sum sufficient to pay the dividends of all creditors scheduled. *In re Atlantic Const. Co.*, (S. D. N. Y. 1915) 228 Fed. 571.

Vol. I, p. 648, sec. 12d (1).

The decision of the creditors is evidence, *prima facie*, that the composition is for their best interest; and the burden is upon those who attack the composition. *In re Spiller*, (D. C. Mass. 1916) 230 Fed. 490. "The mere fact that the estate will on full administration pay more to the creditors than the offer in composition is not sufficient reason for refusing confirmation. Other considerations than the mere amount of the dividends may properly be considered by creditors in determining whether to accept or reject the offer. They have, within fair limits, a right to decide in favor of an immediate payment, as against a postponed and uncertain one, probably of larger amount. A decision to that effect, honestly made by an overwhelming majority of the creditors, in the exercise of their business judgment, ought not to be overridden, unless justice to the objecting minority requires such action." *In re Spiller*, (D. C. Mass. 1916) 230 Fed. 490.

When composition will not be confirmed.—Where the court is not satisfied with the proof of the validity of claims of certain of the creditors necessary to consti-

tute the required majority assenting to the composition confirmation may be denied. *In re Weintrob*, (E. D. N. C. 1917) 240 Fed. 532.

Where a bankrupt omitted from a financial statement a liability for the purchase price of goods still on hand confirmation of a composition has been denied. *In re Kerner*, (S. D. N. Y. 1917) 245 Fed. 807.

Where there is either an unexplained large shortage in the bankrupt's assets or certain statements made by him several months prior to his offer of composition were false, confirmation of the composition will be denied. *In re Weintrob*, (E. D. N. C. 1917) 240 Fed. 532.

An offer of composition has been rejected where it was offered to the creditors before the bankrupt was examined in open court and had filed in court his schedules. *In re Berler Shoe Co.*, (S. D. N. Y. 1917) 246 Fed. 1018.

Vol. I, p. 650, sec. 12d (2).

Concealment.—Where the only books a bankrupt kept were a merchandise ledger, which showed his accounts with all those from whom he purchased on credit, a check book and a pass book, this was held not to authorize an inference of intended concealment. *In re Silberstein*, (S. D. N. Y. 1915) 225 Fed. 665.

Fraudulent transfer.—Payment of money to a wife and to a daughter for a wedding trousseau do not necessarily operate as a bar to a discharge and therefore authorize a refusal by the court of a confirmation of a composition, but much must depend on the circumstances of the particular case. *In re Silberstein*, (S. D. N. Y. 1915) 225 Fed. 665.

Vol. I, p. 651, sec. 12e.

Effect of confirmation.—While the confirmation of a composition discharges the bankrupt where he lives up to the agreement and composition, yet it has been held that where cash and notes are given pursuant to the order confirming the composition, and the notes are not paid, the original debt revives. And this is said to be true though the notes are indorsed by a third party, unless it is established by the evidence that they were taken in satisfaction of the original debt. *American Woolen Co. v. Friedman*, (1916) 97 Misc. 593, 163 N. Y. S. 162.

Distribution.—The clerk of the court is not charged with the duty of making the distribution of the consideration in cases of compositions. *In re Newbold*, (D. C. Utah 1917) 244 Fed. 888.

Nor is the clerk of the court entitled to charge any amount for the distribution of the consideration paid in compositions effected in bankruptcy proceedings. *In re Newbold*, (D. C. Utah 1917) 244 Fed. 888.

Claims not scheduled.—Where a bankrupt offered a composition which omitted the claimant from its schedule of creditors for the reason that such creditor had refused to file a claim in the estate of the bankrupt on the theory that its debt was not one dischargeable in bankruptcy, it was declared: "Either the composition should include the payment of this dividend, and the dividend should be paid with an express provision that it is on account of a debt claimed to be not dischargeable, or the bankrupt Alpert must deposit the amount which would be the dividend to be paid upon the amount which is claimed by the Nankin estate, and the amount of this claim may be litigated further." *In re Alpert*, (E. D. N. Y. 1916) 237 Fed. 295.

Claims reserved for future liquidation.—Where the claims of creditors secured by a special fund were reserved for future liquidation in an order of confirmation, it was held that the claims must be first liquidated before the court could distribute the consideration for the composition. *In re Hollins*, (S. D. N. Y. 1916) 230 Fed. 920.

Consideration for composition not paid.—Where a composition has been ordered the moral obligation to pay in full is sufficient to support a new promise, made after the bankrupt is discharged, to pay a creditor in full. *Spann v. Read Phosphate Co.*, (C. C. A. 4th Cir. 1916) 238 Fed. 338, 151 C. C. A. 354.

Vol. I, p. 652, sec. 13a.

Order confirming composition will not be disturbed where the court on appeal is unable to say from a consideration of the evidence before the referee and the district judge that they were clearly in error in finding it insufficient to prove a statement made by the bankrupt was materially false and made for the purpose of obtaining credit thereby. *International Trust Co. v. Myers*, (C. C. A. 1st Cir. 1917) 245 Fed. 110, 157 C. C. A. 406.

Right to discharge.—"The policy of the law with respect to the discharge of bankrupts from the legal obligation to pay their debts has been determined and settled by Congress. The bankrupt is entitled to the discharge, except in certain clearly defined cases." *In re Pechin*, (E. D. Pa. 1915) 225 Fed. 798.

Vol. I, p. 653, sec. 14a.

Who entitled to a discharge.—A corporation is entitled in a proper case to receive a discharge in bankruptcy. *In re Hargadine-McKittrick Dry Goods Co.*, (E. D. Mo. 1917) 239 Fed. 155.

Individual firm members.—Where no act of bankruptcy is charged against the members of a firm, and the proceedings

are against the partnership as a legal entity, the individual members are not entitled to a discharge in bankruptcy. *Peterson v. Perego, etc., Co.*, (Ia. 1917) 163 N. W. 224.

Administrator.—Bankruptcy proceedings do not abate on the death of the alleged bankrupt in which case the administrator may properly file an application for a discharge. *In re Agnew*, (N. D. N. Y. 1915) 225 Fed. 650.

Application for discharge.—"The question as to whether the bankrupt will apply for a discharge, or not apply, is determined by himself alone. The court has no part in this determination. This is a personal matter of the bankrupt until the petition for a discharge is filed, and neither the creditors nor the court are called upon to act until the application is filed." *In re Skaats*, (S. D. Ala. 1915) 233 Fed. 817.

Notice.—Application for discharge must be made by the bankrupt upon notice to the creditors at the addresses given in the schedules, unless something in the record gives information that that address has been changed, or that some one else has succeeded to the creditor's rights. *In re Blaesser*, (E. D. N. Y. 1916) 230 Fed. 528.

When application must be made.—"The next twelve months."—If the true construction of the words 'subsequent to being adjudged a bankrupt' in the law is that they were placed there solely to prevent the filing of a petition for a discharge before adjudication, which adjudication follows a voluntary petition as matter of course, then the words 'within the next twelve months' would clearly refer to the words 'after the expiration of one month,' and the true reading would be 'any person, subsequent to being adjudged a bankrupt may, after the expiration of one month and within the next twelve months, file an application,' etc. As the section is written in the statute it is quite clear that the Congress intended that the bankrupt should be debarred from filing his petition for a discharge for one month after his adjudication as a bankrupt, giving that time for his creditors to make inquiry and examine the bankrupt and witnesses prior to the filing of an application for a discharge. Then comes the fixing of the time, limitation of time, within which the application for discharge must be filed, and then the right to an extension of time by order of the court in case he (the bankrupt) is unavoidably prevented from filing his application within 12 months next succeeding the adjudication. *In re Snell*, (N. D. N. Y. 1917) 244 Fed. 613. See also *In re Jacobs*, (C. C. A. 6th Cir. 1917) 241 Fed. 620, 154 C. C. A. 378; *In re Daly*, (N. D. N. Y. 1915) 224 Fed. 263.

Delay.—If delay is occasioned by the fault of a postmaster, or the postmaster's employees, where the application is forwarded by mail, or is occasioned by the fault of some clerk or employee in the office of the attorney making the application, justice demands that a nunc pro tunc order be made. It is not the purpose or policy of the law in such a matter as this to take advantage of errors, or mistakes, or misconstructions." *In re Daly*, (N. D. N. Y. 1915) 224 Fed. 263.

Delay by court or referee.—Delay by the court or referee in conducting the bankruptcy proceedings proper or in deciding questions relating to the due administration of the estate arising therein affords no excuse for not filing the application for a discharge within the time fixed by statute. The decision or determination of such questions in no way affect the right of a bankrupt to file his application for a discharge. Thus it was so held where the only excuse offered by the bankrupt for not filing his application in time is that the referee failed to notify him or his attorney of his decision as to the necessity of appointing a trustee, which appointment the referee finally decided not to make. *In re Snell*, (N. D. N. Y. 1917) 244 Fed. 613.

Mistake.—Where the petitioner's counsel, through an honest mistake as to the law, supposed that the petition for discharge could not be filed until the equity proceedings in the state court (in which charges were made against the bankrupt, which would be sufficient, if established, to defeat the discharge) had been terminated, and he therefore did not attempt to file the petition for discharge until the conclusion of those proceedings it was declared that it would be altogether too strict a construction of the statute to hold that on such facts the bankrupt did not have the right to petition for his discharge within the six months period. *In re Swain*, (D. C. Mass. 1917) 243 Fed. 781.

Effect of failure to apply for discharge on subsequent bankruptcy proceedings.—"Where a bankrupt fails to apply in due time for a discharge, or is denied a discharge, from debts provable in one proceeding, he cannot be granted a discharge from such debts in a subsequent proceeding." *In re Warnock*, (W. D. Tenn. 1917) 239 Fed. 779.

The failure of a bankrupt to apply for a discharge in a previous proceeding precludes him, in a subsequent proceeding, from procuring a discharge from the scheduled and provable debts in the former. *In re Cooper*, (D. C. N. J. 1916) 236 Fed. 298.

In a subsequent bankruptcy proceeding, when it appears that there are debts which have been incurred since the first proceeding, and from which he is entitled

to a discharge, the bankrupt may be granted a qualified discharge, excepting the old debts. *In re Cooper*, (D. C. N. J. 1916) 236 Fed. 298.

Vol. I, p. 661, sec. 14b.

- I. Generally.
- II. Objections to bankrupt's discharge.
- III. Hearing and proof.
- IV. Determination.

I. GENERALLY (p. 662)

Nature of proceeding.—"An application for a discharge is in the nature of a separate proceeding from the original case, which is closed with the final distribution of assets. The reference to the referee of the original case confers no jurisdiction whatever on him as to the discharge." *In re Kendrick*, (D. C. Vt. 1916) 226 Fed. 960.

Discharge as a matter of right.—"A discharge under the present act is a legal right, unless some objection be filed and affirmatively sustained, for reasons specifically enumerated in section 14 of the statute, and not otherwise." *In re Kaufman*, (C. C. A. 2d Cir. 1917) 239 Fed. 305, 152 C. C. A. 293. See also *In re Wix*, (N. D. S. C. 1916) 236 Fed. 262.

Conditions of discharge.—"An insolvent debtor has no means of obtaining a discharge, except under favor of the bankruptcy law, and that law expressly forbids the granting of a discharge under certain conditions, and they cannot be disregarded even though the denial may impose a hardship on the bankrupt. *In re Fackler*, (N. D. Ohio 1917) 246 Fed. 864.

Effect of nondischargeable debts.—"The fact that a discharge from one of the debts cannot be granted does not affect the right of the bankrupt to be discharged from such as are dischargeable. *In re Lockwood*, (E. D. N. Y. 1917) 240 Fed. 158.

II. OBJECTION TO BANKRUPT'S DISCHARGE (p. 664)

Right to object.—"The right to oppose the bankrupt's discharge may be a property right, in the sense that, if discharge is denied, any lien would remain and would pass under the state law in case of the death of a creditor. But this right to oppose is not such that the bankrupt should be compelled to proceed in the proper jurisdiction for administration of the deceased creditor's estate, in order to cut off those rights by actual notice of further hearings to all parties who might prove themselves entitled to name the representative of the estate, or who might contest successfully the claims of others to name such representative. A

trustee would not be bound, in declaring a dividend, to seek out those who have a right to make claim to that dividend; but the burden would be upon the proper representatives of the estate of the deceased creditor to claim their property. So, in the matter of discharge, the burden is upon the bankrupt to give reasonable notice to all those appearing by the record to be entitled to an opportunity of being heard or of putting themselves in a position where their interests may be heard. If the bankrupt does this he is entitled to have the proceedings go forward, after waiting a reasonable time for other claimants to assert their claims." *In re Blaesser*, (E. D. N. Y. 1916) 230 Fed. 528.

Specifications of objections—*Requisites*.—A bankrupt is entitled to a discharge unless one or more of the six grounds set out in section 14 of the Bankruptcy Act . . . are pleaded and sustained by proof, and the burden to do this rests upon the objecting creditor. The rule of pleading requires the same certainty in the specifications of objections as in other pleadings; such certainty as will put the bankrupt on notice of what he is to meet." *In re Groves*, (S. D. Fla. 1917) 244 Fed. 197.

Where it is alleged in the specification of objections that some of the creditors are pecuniarily interested in the estate and that they have filed proof of their claims which have been allowed and it appears that all of the objecting creditors have claims which will be barred by the discharge, a right to oppose the granting of a discharge is sufficiently shown. *In re Fackler*, (N. D. Ohio 1917) 246 Fed. 864.

A specification in objections to the discharge of a bankrupt on the ground of concealment is insufficient where it does not charge that the concealment was knowingly and fraudulently done. *In re Opava*, (N. D. Ia. 1916) 235 Fed. 779.

Amendment.—Where after the original specifications of objections were filed, and during the progress of the hearing upon those which were filed, another alleged instance of the same general character as those already charged came to the knowledge of the trustee and of objecting creditors, it was held that leave should be granted to amend the specifications. *In re Pechin*, (E. D. Pa. 1915) 225 Fed. 798.

Who may object.—A mere volunteer, not having a party in interest, cannot object to a discharge "unless the creditors, either singly or collectively, desire that a bankrupt's discharge be opposed, such discharge must be granted." *In re White*, (N. D. Cal. 1917) 238 Fed. 874.

Party in interest.—Where a petitioner's claim has been proved, admitted by the bankrupt, objected to by no one, allowed

by the referee, and not reconsidered on motion of the trustee, it should be regarded as "liquidated" under section 57 of this Act, and the petitioners are a "party in interest" entitled to oppose the bankrupt's discharge under this section. *In re Menzin*, (C. C. A. 2d Cir. 1916) 238 Fed. 773, 151 C. C. A. 623.

A creditor cannot insist on remaining in the bankruptcy proceeding and at the same time pursue his remedy in the state court on the theory that his debt is not dischargeable. A creditor like this one can prove his claim in bankruptcy and oppose the discharge on the ground of false statement in obtaining property; but, if he will not liquidate his claim, and persists in proceeding in another jurisdiction on the theory that the debt is not provable and not dischargeable, then by his own interpretation he is not a "party in interest" entitled to oppose discharge. *In re Menzin*, (S. D. N. Y. 1916) 233 Fed. 333.

III. HEARING AND PROOF (p. 670)

Nature of hearing.—Objections to a bankrupt's discharge are the beginning of a distinct and separate dispute, and the hearing thereon is in effect a trial in equity. *In re Amer*, (E. D. Pa. 1915) 228 Fed. 576.

Evidence.—The testimony of an objecting creditor, taken by consent and given under oath, may be used, after his death upon proof of the administration of the oath to testify, even if the actual signature or verification upon the paper itself cannot be obtained. *In re Blaesser*, (E. D. N. Y. 1916) 230 Fed. 528.

Burden of proof.—The burden rests on the creditor objecting to the discharge of a bankrupt to show that he is not entitled to it. *In re Wix*, (W. D. S. C. 1916) 236 Fed. 262.

Hearing postponed pending proceeding in state court.—Where a petitioner brought suit in a state court more than four months before bankruptcy and had garnishments served on property, to secure a release of which a bond was filed, it has been held that he has an equity entitling him to a "reasonable postponement" of the discharge of the bankrupt, so as to enable him to enforce his rights in the state court. *In re Philips*, (S. D. Ga. 1915) 224 Fed. 628.

Where a creditor dies during the hearing on his specifications of objections, there can be no general presumption that a man is unable to pay his debts, and that therefore he has creditors who are more interested than his next of kin, and where a reasonable time has elapsed to allow such creditors, if they exist, to act on the default of the next of kin, or representatives of the deceased, there would seem to be no reason why the bankrupt

should not be allowed to proceed with his application for discharge. *In re Blaesser*, (E. D. N. Y. 1916) 230 Fed. 528.

Reference to special commissioner—Jurisdiction.—The question of the effect of a discharge on a particular debt can be raised only in a proceeding before a court having jurisdiction to decide that issue, and cannot be determined by a special commissioner to whom specifications of objection to the discharge have been referred. *In re Lockwood*, (E. D. N. Y. 1917) 240 Fed. 158.

Confirmation of findings by special commissioner.—As to the confirming of such findings, it has been said: "Experience has proven that a report in the form of an opinion, such as has been used in admiralty and equity and is customary in bankruptcy, is generally of more value than enumerated statements of fact and conclusions of law, which require extensive exceptions in the nature of a pleading, if confirmation is opposed. A simple motion to confirm a report, in the form of an opinion, allows argument of any question involved. Further, the District Court will not overrule the findings of the commissioner, if there is any evidence upon which those findings are based, unless the conclusions are contrary to law, or unless consideration of the entire issue leads to different construction of some of the acts involved. It will be held, therefore, that there is no necessity for returning the report, or for more particular findings." *In re Rowe*, (E. D. N. Y. 1917) 240 Fed. 165.

Collateral attacks—Order extending time—Letters of administration.—On the hearing of an application for a discharge made by the administrator of a deceased bankrupt after the expiration of the year under the authority of an order extending the time in which to make such an application the order granting the extension cannot be attacked in the proceeding before the special master or judge, nor can the regularity or validity of the letters of administration. Such an attack can only be made by motion. *In re Agnew*, (N. D. N. Y. 1915) 225 Fed. 650.

IV. DETERMINATION (p. 673)

Vacating discharge.—An order may be granted vacating a discharge and allowing specifications to be filed where the default of the objecting creditor in filing them arose through some misunderstanding between him and the bankrupt's attorney about the time and place when the bankrupt should appear for his examination. *In re Applegate*, (S. D. N. Y. 1916) 235 Fed. 271.

Costs.—As the hearing on the objections to a bankrupt's discharge is in effect a trial in equity, the equity rules as to taxation of costs may be properly applied.

In re Ames, (E. D. Pa. 1915) 228 Fed. 576.

The fact that the same objecting creditor filed similar exceptions in five separate cases does not relieve it from payment of costs to each of the bankrupts. *In re Ames*, (E. D. Pa. 1915) 228 Fed. 576.

Vol. I, p. 677, sec. 14b (1).

Making false oath.—Although it is a crime to make any false oath in any proceeding in bankruptcy, it is not a ground for denial of a discharge unless the oath be made in the bankruptcy proceedings of the bankrupt himself. A mere literal reading of the two sections (Bankr. Act, §§ 14 and 29) might lead to a contrary result; but it is perfectly obvious that the bankrupt's discharge depends upon his conduct toward his own creditors, and not upon his general truthfulness, even in other independent proceedings. *In re Lesser*, (S. D. N. Y. 1916) 232 Fed. 368.

Incredible answers.—A discharge has been refused where on his examination the bankrupt again and again replied, "I don't know," "I couldn't say," "I don't remember," to questions concerning matters which had been within his knowledge, which had taken place within a few months before the examination, and which were of such character that entire forgetfulness concerning them all was incredible. The court further said in this case: "More than 60 times during an examination covering fourteen pages of typewriting, the bankrupt made answers of the sort referred to. In some instances the answers can, perhaps, be justified by the phrasing of the question; but in many others they are obviously untrue. The inference of an intent to falsify is greatly strengthened by the repetition of such answers to various sorts of questions, such as occurs in this examination." *In re Kaplan*, (D. C. Mass. 1917) 246 Fed. 222.

False oath due to mistake or advice of counsel.—If a false oath was due to a mistake in fact, or the honest advice of counsel, to whom the bankrupt had disclosed all the facts relative to the items omitted from his schedules, and which form the basis of the objections, a discharge will not be refused. In other words, such oath must have been knowingly and fraudulently made. *In re Stafford*, (D. C. Conn. 1915) 226 Fed. 127.

False oath as to homestead exemption.—An objection that the bankrupt made a false oath with reference to his homestead exemption cannot be passed upon until the question is settled of the bankrupt's right to the exemption, and even if it should be determined that he is not entitled to the exemption, that would not show that he swore wilfully false in his application for the same. *In re Meikleham*, (N. D. Ga. 1916) 236 Fed. 401.

Specifications alleging false oath.—The specifications of objection must state that the oath was “knowingly and fraudulently” made. This must be the charge in the specifications, and the oath made must be as to a material matter, which must appear from the specifications of objection. The requirement that the false oath must have been, not only knowingly made, but “fraudulently” made, is of the very essence of the objection. “Intentionally” is not the same as “fraudulently.” The meaning of the two words is not the same. The one word is not a synonym of the other. *In re Agnew*, (N. D. N. Y. 1915) 225 Fed. 650.

Omissions and inaccuracies in the schedule.—Where it appears that a bankrupt has concealed assets which have not been listed in his schedules, he will be deemed to have taken a false oath when he swore to the truth of the schedules. *In re Stafford*, (D. C. Conn. 1915) 226 Fed. 127.

Where in making up his schedules the bankrupt attempted to decrease certain claims to a creditor and it appeared that the claim was much larger it was declared that unless the creditor could have been successfully estopped, and his claim held down to the lower amount, it would seem that the attempt by the bankrupt to falsely state his financial condition would be sufficient ground for denial of discharge. *In re Rowe*, (E. D. N. Y. 1917) 240 Fed. 165.

Concealment—“*Knowingly and fraudulently*.”—To constitute the punishable offense of having knowingly and fraudulently concealed while a bankrupt from his trustee property belonging to his estate in bankruptcy, such concealment must have been by the bankrupt after the filing of a petition against him, while a bankrupt, or after his discharge, and the property must have been concealed from the trustee, and such property must have belonged to the estate in bankruptcy. The concealment must be knowingly and fraudulently done. The evidence must be clear. *In re Agnew*, (N. D. N. Y. 1915) 225 Fed. 650.

Opponents of discharge must show existence of property.—Specifications of objection should point out or specify what property was concealed, and when, with some reasonable degree of certainty. *In re Agnew*, (N. D. N. Y. 1915) 225 Fed. 650.

Vol. I, p. 683, sec. 14b (2).

Concealment of financial condition.—See to same effect as original annotation, *In re Shrimmer*, (E. D. N. C. 1916) 228 Fed. 794; *In re Kaplan*, (D. C. Mass. 1917) 245 Fed. 222.

Intention to conceal.—See to same effect as original annotation, *In re Shrimmer*, (E. D. N. C. 1916) 228 Fed. 794.

“Failed to keep books of accounts.”—In a case, involving the construction of

this provision it was said: “Analyzing this statutory provision, it is clear that its sole purpose is to condemn a design on the part of a bankrupt to conceal his financial condition by either (a) destroying his books of accounts or records, or (b) concealing them, or (c) failing to keep them. It cannot be construed to require any particular system of bookkeeping, nor can it be construed to require the keeping of books at all. The books kept may be so faulty and deficient as to in fact deceive creditors as to the bankrupt's financial condition, yet, if they have been so kept with no purpose to conceal such condition, the inhibition of this statute does not apply. Congress emphasized this construction when by the amendment of 1903 it struck out the words ‘fraudulent’ before the word ‘intent,’ ‘true’ before the words ‘financial condition,’ and the words ‘and in contemplation of bankruptcy,’ following the words ‘financial condition.’” *Sherwood Shoe Co. v. Wix*, (C. C. A. 4th Cir. 1917) 240 Fed. 692, 153 C. C. A. 490.

No particular method of bookkeeping is required; the law does not require a man to keep books at all. The only provision of the law is that he must not adopt a method of keeping books for the purpose of concealing his true financial condition. No matter how irregularly or poorly kept his books may be, if the evidence does not show that his intent was to conceal his true financial condition, he is entitled to his discharge.” *In re Wix*, (W. D. S. C. 1916) 236 Fed. 262.

False entries.—The making of false entries in the books is, of course, a failure to keep true books of the most glaring sort, and only from true books can the bankrupt's financial condition be ascertained. *In re Helfgott*, (S. D. N. Y. 1917) 245 Fed. 358.

Limited business.—The nature and extent of the bankrupt's business may be so limited that an intent to conceal his financial condition will not be inferred from his failure to keep books or more complete records. *In re Arnold*, (D. C. N. J. 1915) 228 Fed. 75. See also *Devorken v. Security Bank, etc., Co.*, (C. C. A. 6th Cir. 1917) 243 Fed. 171, 156 C. C. A. 37.

Long-established method.—The fact that a bankrupt had for ten years adopted the same method or lack of method of bookkeeping refutes the presumption that he had adopted such method for the purpose of concealing from his creditors his financial condition. *Sherwood Shoe Co. v. Wix*, (C. C. A. 4th Cir. 1917) 240 Fed. 692, 153 C. C. A. 492.

Where the agent of a bankrupt failed to keep the required books, the bankrupt may be refused a discharge, it being said that there is no reason why the bankrupt should not be required to take the risk of the agent's conduct, as in many other instances. *In re Janavetz*, (C. C. A. 3d

Cir. 1915) 219 Fed. 876, 135 C. C. A. 546; *In re Landersman*, (D. C. N. J. 1917) 239 Fed. 766.

Intention presumed.—That the failure of a bankrupt to keep books and records was with the intent to conceal his financial condition, in the absence of any reasonable explanation will be presumed, on the theory that he is chargeable with intending the natural and probable consequences of his own acts and omissions. *In re Landersman*, (D. C. N. J. 1917) 239 Fed. 766.

"The intent spoken of in this clause of the Act need not be proven by absolute showing that the party, in failing to keep books, designed to conceal assets or fail to disclose the state of his business; but it may be deduced from all the facts and circumstances in the case and thus ascertained and determined. The well-established rule is often invoked in determining the intent, namely, that a man must be presumed to intend the natural consequences of his act." *In re Josephson*, (D. C. Ore. 1916) 229 Fed. 272; *In re Chass*, (W. D. Pa. 1916) 238 Fed. 573.

The mere destruction of books is not prohibited unless it is done with guilty intent and where there is no proof to that effect and no pretense that a fraud was perpetrated, a discharge will not be denied. *In re Rosenthal*, (C. C. A. 2d Cir. 1916) 231 Fed. 449, 145 C. C. A. 443.

Burden of proof.—In determining whether the bankrupt has offended against the provisions of the Bankruptcy Act in failing to keep certain books the burden rests on the objecting creditors to prove the essential element of the offense that the acts done and omitted by the bankrupt were with intent to conceal his financial condition. *Sheinberg v. Hoffman*, (C. C. A. 3d Cir. 1916) 236 Fed. 343, 149 C. C. A. 475.

The objecting creditor carries the burden of establishing the unlawful intent. *In re Shrimmer*, (E. D. N. C. 1916) 228 Fed. 794.

Vol. I, p. 689, sec. 14b (3).

False statement in writing.—*In General.*—See to same effect as original annotations, *In re Josephson*, (D. C. Ore. 1916) 229 Fed. 272; *In re Smith*, (N. D. N. Y. 1916) 232 Fed. 248.

The written statement must have been (1) materially false, and (2) made for the purpose of obtaining property on credit. A statement, to be "materially false" within the meaning of this statute, must be not only false in fact in a material matter, but must have been made with the intention to deceive. And such statement must have been made for a certain specified purpose, namely, "to secure property from another on credit." *Aller-Wilmes Jewelry Co. v. Osborn*, (C. C. A.

8th Cir. 1916) 231 Fed. 907, 146 C. C. A. 103.

It may appear not only that the statement relied on was false but was also knowingly made. *In re Stafford*, (D. C. Conn. 1915) 226 Fed. 127; *Hamlin v. J. M. Radford Grocery Co.*, (Tex. Civ. App. 1916) 182 S. W. 716.

Extension of credit on faith of statement.—A false statement in writing made for the purpose of obtaining credit bars a discharge. *In re Smith*, (N. D. N. Y. 1916) 232 Fed. 248; *In re Blank*, (E. D. Pa. 1916) 236 Fed. 801; *In re Samet*, (D. C. Md. 1917) 243 Fed. 203.

Conditional sale on faith of statement.—Where false statements are made the case is not taken out of the operation of this provision though the goods were delivered under "conditional sale contracts" with a reservation of title. *In re Fackler*, (N. D. Ohio 1917) 246 Fed. 864.

False statement by stockholder of corporation.—A false statement made by a bankrupt may bar his right to a discharge, although the credit was obtained by a corporation of which the bankrupt owned the majority of the stock. *In re Stafford*, (D. C. Conn. 1915) 226 Fed. 127.

False statement by stockbroker.—Where a stockbroker represented to a customer who purchased stock on margin, that he had stocks "on hand" for him and the latter, induced thereby, made further payments thereon, it was held proper to deny a discharge to the broker. *In re Shea*, (D. C. Mass. 1917) 245 Fed. 363.

Financial statement to bank.—Where a bank relying on false statements made by the bankrupt did not apply the debtor's balance to the reduction or extinguishment of any of his notes when they fell due in consequence of which he owed the bank more than he otherwise would have done, a discharge was denied. *In re Samet*, (D. C. Md. 1917) 243 Fed. 203.

False statement to commercial agency.—Where the bankrupt gave a false statement of his financial standing to a mercantile agency and according to his own testimony the purpose was not merely to obtain a rating but to obtain credit through the agency from his creditors it was held that the bankrupt made such agency his duly authorized agent to circulate the falsehoods concerning his financial condition among his different creditors whenever they should ask for information, and the case therefore falls directly within the terms of section 14b. *In re Haimowich*, (E. D. Pa. 1916) 232 Fed. 378, *affirmed* (C. C. A. 3d Cir. 1917) 243 Fed. 338, 156 C. C. A. 118.

"But if in fact the false statement was made generally to the mercantile agency and was not afterward communicated to a subscriber, and if, therefore, no credit was

procured upon faith in it, then obviously the provision, which contemplates obtaining property on credit based upon a false statement, does not extend to a false statement alone." *Haimowich v. Mandel*, (C. C. A. 3d Cir. 1917) 243 Fed. 338, 156 C. C. A. 118, *affirming* (E. D. Pa. 1916) 232 Fed. 378.

A false statement made to a commercial agency two years before incurring the debt in question has been held not to be a sufficient ground on which to base opposition to a discharge, as it was not a statement made in contemplation of securing credit, which could be relied on by the creditor without additional inquiry. *Balfe v. Tilton*, (D. C. N. H. 1916) 237 Fed. 684.

In *J. W. Ould Co. v. Davis*, (C. C. A. 4th Cir. 1917) 246 Fed. 228, 158 C. C. A. 388, it was held that Congress did not intend to make "general statements to mercantile agencies not specifically asked for by prospective creditors" available grounds for opposing a bankrupt's discharge.

False statement made by partner.—See to same effect as original annotation, *Doyle v. Baltimore First Nat. Bank*, (C. C. A. 4th Cir. 1916) 231 Fed. 649, 145 C. C. A. 535.

An omission of an indebtedness of partners to relatives, in a statement made by a member of a firm for the purpose of obtaining credit is a ground for refusing a discharge. *In re Blank*, (E. D. Pa. 1916) 236 Fed. 801.

Statement omitting liabilities.—A bankrupt who omitted some liabilities from a statement by him of his financial condition cannot defend by showing that the balance is substantially correct. *In re Maaget*, (S. D. N. Y. 1911) 245 Fed. 804. See *In re Kerner*, (S. D. N. Y. 1917) 245 Fed. 807.

Immaterial false statement.—While there may be a point at which the proportion of sums omitted in an untrue statement to the total sum of liabilities or surplus may be so insignificant as to have no weight in making the untruth material, yet in the consideration of the question, each case must stand upon its own facts. *In re Blank*, (E. D. Pa. 1916) 236 Fed. 801.

It has been held that the discharge must be denied, if money or property in any amount, not utterly trivial, is thus obtained. *In re Fackler*, (N. D. Ohio 1917) 246 Fed. 864.

Intent.—See to same effect as original annotation, *Doyle v. Baltimore First Nat. Bank*, (C. C. A. 4th Cir. 1916) 231 Fed. 649, 145 C. C. A. 535.

Evidence—Burden of proof.—The burden is upon the objector to sustain the allegations in his specifications of objection. *In re Haimowich*, (E. D. Pa. 1916) 232 Fed. 378.

Vol. I, p. 694, sec. 14b (4).

Concealment, etc., of assets.—*In General.*—To the same effect as the original annotation see *In re Cooper*, (C. C. A. 2d Cir. 1916) 230 Fed. 991, 145 C. C. A. 185; *In re Opava*, (N. D. Ia. 1916) 235 Fed. 779; *In re Braus*, (S. D. N. Y. 1916) 237 Fed. 139; *In re Wibeck*, (D. C. Mass. 1917) 245 Fed. 135.

What constitutes concealment.—*Small bank balance.*—Where a bankrupt had a sum of money on deposit in a bank which he did not schedule or turn over to the trustee but later checked it out and used it for his own personal benefit, there was held to be a concealment justifying an inference of fraud, even though the amount was small. *In re Smith*, (N. D. N. Y. 1916) 232 Fed. 248.

Transfer to bankrupt's wife.—Although a deed given to a bankrupt's wife within four months of bankruptcy might constitute a preference it would not of itself be a ground for opposition to a discharge. "If the payment merely constituted a preference, the discharge should be granted, and if the bankrupt did not intentionally conceal his assets from his creditors, but sought to secure an equitable claim belonging to his wife, even though it might make him insolvent, it would not legally of necessity involve fraudulent concealment of assets." *In re Kean*, (E. D. N. Y. 1916) 237 Fed. 682.

Mere carelessness in scheduling assets will not amount to such a fraudulent concealment as will bar a discharge. *In re Meikleham*, (N. D. Ga. 1916) 236 Fed. 401.

A transfer made more than four months prior to filing of petition, though, probably made to hinder, delay, and defraud creditors, is not a ground for objection to a discharge. *In re Fackler*, (N. D. Ohio 1917) 246 Fed. 864.

Transfer of equity of redemption.—Whether such a transfer will operate to bar a discharge was considered in *Devorkin v. Security Bank, etc., Co.*, (C. C. A. 6th Cir. 1917) 243 Fed. 171, 156 C. C. A. 37.

Presumption of value.—"In deciding whether a conveyance had the effect to hinder, delay, and defraud creditors, it is of no controlling importance that the trustee has not been able to avoid it, or even that he has not tried to avoid it, and, doubtless, in the absence of any proof, there would be some presumption that property conveyed by the bankrupt had value." *Devorkin v. Security Bank, etc., Co.*, (C. C. A. 6th Cir. 1917) 243 Fed. 171, 156 C. C. A. 37.

Advice of counsel.—See to same effect as original annotation, *In re Stafford*, (D. C. Conn. 1915) 226 Fed. 127.

Specification of objections.—A specification of objections to the discharge of a bankrupt on the ground of concealment

is insufficient where it does not charge that the concealment was knowingly and fraudulently done. *In re Opava*, (N. D. Ia. 1916) 235 Fed. 779.

Evidence—Burden of proof on opposing creditors.—Creditors opposing the bankrupt's application for a discharge on the grounds specified in this section have the burden of proof. *Poff v. Adams*, (C. C. A. 4th Cir. 1915) 226 Fed. 187, 141 C. C. A. 185; *In re Landersman*, (D. C. N. J. 1917) 239 Fed. 766.

Vol. I, p. 701, sec. 14b (5).

Application and effect of section.—While this Act provides that a bankrupt may have only one discharge within six years it does not preclude him from having more than one adjudication and distribution of his property through a Bankrupt Court during that period. *In re Johnson*, (S. D. Ala. 1916) 233 Fed. 841.

There is no limit to the number of petitions a debtor may file in bankruptcy, nor of their frequency, except he may not be granted more than one discharge in a voluntary proceeding within a period of six years. *In re Warnock*, (W. D. Tenn. 1917) 239 Fed. 779.

Proceedings brought within six years.—Previous proceedings in bankruptcy in which no application for a discharge was made do not bar the right of the bankrupt to a discharge in subsequent proceedings brought within six years. *In re Skaats*, (S. D. Ala. 1914) 233 Fed. 817.

Vol. I, p. 701, sec. 14b (6). [*Refusal to obey lawful orders.*]

Refusal to answer proper questions.—In order to justify the denial of a discharge on the ground of the refusal by a bankrupt to answer questions it must appear that the court or referee approved the question propounded, and that then the bankrupt refused to answer, and that such question was material. *In re Lenweaver*, (N. D. N. Y. 1915) 226 Fed. 987.

Vol. I, p. 702, sec. 14b (6). [*When trustee may interpose objections.*]

Scope of trustee's authority.—See the case of *In re White*, (N. D. Cal. 1917) 242 Fed. 1001.

Vol. I, p. 703, sec. 15.

Revocation of discharge.—This section does not prevent the granting of an order vacating a discharge and allowing specifications to be filed where the default of the objecting creditor in filing them arose through some misunderstanding between him and the bankrupt's attorney about the time and place when the bankrupt should appear for his examination. *In re*

Applegate, (S. D. N. Y. 1916) 235 Fed. 271.

Vol. I, p. 706, sec. 16a.

Surety on bond to dissolve attachment.—In an action against the sureties on a bond given to dissolve an attachment it has been held that the fact that the plaintiff had presented his claim against the bankrupt to the Bankruptcy Court, and received dividends thereon in excess of the sum in which the undertaking involved in the pending suit was given, did not operate to discharge the obligation of the sureties upon said undertaking. *Curtin v. Katschinski*, (1916) 31 Cal. App. 768, 161 Pac. 764.

Surety on injunction bond.—In an action on a bond given on the issuance of an injunction to enjoin the collection of a judgment, it has been held that an adjudication and discharge of the judgment debtor in bankruptcy and the action of the creditor in accepting a composition and a share of the proceeds thereof does not operate to discharge the surety on the bond. *Martin Furniture Co. v. Massey*, (1916) 135 Tenn. 338, 186 S. W. 451.

The surety on a "forthcoming bond" given to release a levy on property of the judgment debtor, is not released by the discharge of the debtor in bankruptcy proceedings. *Evans v. Rea*, (Tex. Civ. App. 1917) 193 S. W. 707. See also *Evans v. Rea*, (1917) 108 Tex. 260, 191 S. W. 1133.

Indorsers of promissory notes.—The provisions of this section have been applied in the case of an action against the indorsers of a promissory note, the maker of which has been discharged in bankruptcy. *Bass v. Geiger*, (Fla. 1917) 73 So. 796.

Vol. I, p. 708, sec. 17a.

Effect of discharge.—"The discharge is prima facie a release from all debts—at least a bar against enforcement." *Halligan v. Dowell*, (Ia. 1917) 161 N. W. 177.

All provable debts released—In general.—See to same effect as original annotation, *Butler Cotton Oil Co. v. Collins*, (Ala. 1917) 75 So. 975; *Bunting Stone Hardware Co. v. Alexander*, (Tex. Civ. App. 1917) 190 S. W. 1152.

Liens and mortgages.—All liens and mortgages are not annulled or avoided by bankruptcy or discharge, but only those which come within the provisions of the Bankruptcy Act. *Butler Cotton Oil Co. v. Collins*, (Ala. 1917) 75 So. 975.

Valid liens against the property of a bankrupt may be enforced after he is discharged in bankruptcy as he is released from personal liability only. *Wills v. E. K. Wood Lumber, etc., Co.*, (1915) 29 Cal. App. 97, 154 Pac. 613.

Nondischargeable debt.—Where a debt is not dischargeable in bankruptcy, the creditor is not required to come into a Bankruptcy Court and prove his claim, with a view of having it excluded from the order of discharge. *In re Warnock*, (W. D. Tenn. 1917) 239 Fed. 779.

Judgments.—A judgment on a note made by the bankrupt and indorsed by another is a claim provable in bankruptcy and after a discharge has been granted to the bankrupt the enforcement of the judgment against the indorser may be restrained. *Bunting Stone Hardware Co. v. Alexander*, (Tex. Civ. App. 1917) 190 S. W. 1152.

Pleading discharge — Necessity of pleading.—In a suit to enjoin the sale of property under execution where it is claimed that the judgment on which the execution was issued is barred by a discharge in bankruptcy it is necessary for him to plead his discharge and that the debt from which he was discharged and which was asserted against him in the subsequent proceeding was not within any of the classes of claims which the Act excepts from the operation of the discharge. *Bunting Stone Hardware Co. v. Alexander*, (Tex. Civ. App. 1917) 190 S. W. 1152.

Burden of proof.—In a suit to enjoin the sale of property under execution where it is claimed that the judgment on which the execution was issued is barred by a discharge in bankruptcy the burden is on the plaintiff to prove his discharge. *Bunting Stone Hardware Co. v. Alexander*, (Tex. Civ. App. 1917) 190 S. W. 1152.

In an action upon a judgment the burden of establishing that it has been discharged in bankruptcy rests upon the defendant. *Hyde Park Flint Bottle Co. v. Miller*, (1917) 179 App. Div. 73, 166 N. Y. S. 110.

It is for the judgment creditor to show by a preponderance of the evidence that the judgment upon which he sues was not affected by the discharge in bankruptcy because the liability upon which his judgment is bottomed is within said exceptions. *Halligan v. Dowell*, (Ia. 1917) 161 N. W. 177.

Vol. I, p. 716, sec. 17a (2).

- I. False pretenses or representations.
- II. Wilful and malicious injuries.
- III. Miscellaneous.

I. FALSE PRETENSES OR REPRESENTATIONS (p. 716)

Liability for obtaining property by false pretenses or false representations.—See to same effect as original annotation, *In re Menzin*, (C. C. A. 2d Cir. 1916) 238 Fed. 773, 151 C. C. A. 623.

Judgment — In general.—The fact that a liability has passed to judgment does not take it out of the operation of this section,

as the judgment does not so far work a merger that the original claim cannot be inquired into. *Taylor v. Buser*, (1917) 167 N. Y. S. 887.

Judgment on surety bond.—Where a bond was obtained from a surety company by false representations and the company, having been compelled to pay the bond, thereafter sued the insured for false representations in obtaining the bond and obtained judgment against him for the penalty and interest, such judgment is not canceled by his discharge in bankruptcy. *In re Dunfee*, (1916) 219 N. Y. 188, 114 N. E. 52.

Judgment for costs.—Costs decreed to defendants in a suit in equity to reform a written contract of sale, in connection with which false and fraudulent representations were made, as established by a judgment in an action at law, constitute a provable debt in bankruptcy proceedings where they were commenced and the discharge granted after the equity case came into the appellate court. *Kennett v. Tudor*, (Vt. 1916) 99 Atl. 306.

Promissory notes given by bankrupt.—The discharge of a bankrupt does not discharge his liability on a note, executed for borrowed money where it appears that he had created the debt through false pretenses and representations in regard to an insurance policy. *Ehlinger v. Speckels*, (Tex. Civ. App. 1916) 189 S. W. 348.

Renewal note.—The mere giving of a note in renewal of a former one, even if acceptance is induced by false representations is not an obtaining of property by false pretenses or false representations within the meaning of this section. *Carville v. Lane*, (1917) 116 Me. 332, 101 Atl. 968.

When a tort may be waived and an action quasi ex contractu maintained, the claim is a debt within the meaning of the Bankruptcy Act and provable. *Enosburg Falls First Nat. Bank v. Bamforth*, (1916) 90 Vt. 75, 96 Atl. 600.

II. WILFUL AND MALICIOUS INJURIES (p. 720)

Wilful and malicious injury defined.—The words "wilful and malicious" do not have the general, broad, legal significance, but they are used in a more narrow and specific sense, implying actual malice and "wilful disregard of what one knows to be his duty, an act which is against good morals and wrongful in and of itself, and which necessarily causes injury and is done intentionally." It is not necessary that "malice," as used in the phrase "wilful and malicious injuries to the person," should be shown toward a particular individual. In acts of a certain character, the law will imply malice. *McClellan v. Schmidt*, (D. C. N. J. 1916) 235 Fed. 986. See further

In re Levitan, (D. C. N. J. 1915) 224 Fed. 241.

Assault and battery.—The bringing of a suit on a judgment rendered in an action for assault and battery and the recovery of a second judgment thereon does not operate to take the claim out of the operation of this provision. *Taylor v. Buser*, (1917) 167 N. Y. S. 887.

Conversion of property.—Where a person with whom money has been deposited to secure the performance of a contract by another, which contract is fully performed, converts such money to his own use, there is a wilful and malicious injury to the property of another within the meaning of this section. *In re Keeler*, (N. D. N. Y. 1917) 243 Fed. 770.

A conversion of stock by a firm of brokers constitutes a wilful and malicious injury to property where, in violation of instructions to have the stock transferred to the name owner for whom it was purchased, they misappropriate it to help themselves over a financial crisis. *Wood v. Fiske*, (1916) 175 App. Div. 135, 161 N. Y. S. 1097.

Burden of proof.—Where a debt is one which is provable in bankruptcy, the burden of proof is on the judgment creditor to show that such liability is within the exception of this provision as to liabilities for wilful or malicious injury to the person or property of another. *In re Levitan*, (D. C. N. J. 1915) 224 Fed. 241.

III. MISCELLANEOUS (p. 722)

Liabilities for alimony.—Where a state court, in awarding a judgment for alimony, gives the wife the right to occupy certain property as a homestead, such judgment is not released by a discharge in bankruptcy. *Brown v. Brown*, (1916) 172 Ky. 754, 189 S. W. 921.

A divorce decree by which a wife was awarded the "sum of fifty (50) dollars per month, as alimony, payable monthly, or en masse, at the option of the plaintiff, in the sum of five thousand (5,000) dollars," has been held to be a judgment in the nature of alimony and not released by a discharge of the husband in bankruptcy. *Egbers v. Egbers*, (1917) 98 Wash. 531, 167 Pac. 1073.

Vol. I, p. 724, sec. 17a (3).

Debts not duly scheduled—Address of creditor.—A debt is not duly scheduled where it appears that the address of the creditor given in the schedule was the business address of the creditor, and the debtor knew that the creditor had not conducted business at such address for several years and that any communication addressed there would not be received. *Jenkins v. Levy*, (1917) 167 N. Y. S. 847.

Stating the residence of a judgment creditor as unknown, without some evidence of due diligence to ascertain the address, does not constitute a due scheduling of the debt so as to effect its discharge. *Hyde Park Flint Bottle Co. v. Miller*, (1917) 179 App. Div. 173, 166 N. Y. S. 110.

Notice or actual knowledge.—"While it is true that the word 'actual' does not usually advance the meaning, it must be understood in the connection used in the statute under consideration to emphasize the fact that the knowledge of the party must be actual as contradistinguished from constructive or speculative; it must be something existing in fact." *Wheeler v. Newton*, (1915) 168 App. Div. 782, 154 N. Y. S. 431.

Actual knowledge of officer of creditor bank in time to permit of participation in the proceedings in time to prove the claim, is sufficient. *Wrightsville Bank v. Four Seasons*, (Ga. App. 1917) 94 S. E. 649.

Knowledge of bankruptcy proceedings.—The fact that one's debtor has gone into bankruptcy is not notice or knowledge of "the proceedings in bankruptcy;" it does not impose the duty upon the creditor of taking active steps. *Wheeler v. Newton*, (1915) 168 App. Div. 782, 154 N. Y. S. 431; *Jenkins v. Levy*, (1917) 167 N. Y. S. 847.

Burden of proof.—The burden of proof is upon the bankrupt to establish the fact that the debt was duly scheduled and that the creditor had actual knowledge of the proceedings in bankruptcy. *Jenkins v. Levy*, (1917) 167 N. Y. S. 847.

Vol. I, p. 728, sec. 17a (4).

Debt created by fraud or embezzlement.—One who has stolen or fraudulently received a sum of money cannot retain that money and schedule the claim as a debt in his own estate and then obtain a discharge in bankruptcy. *In re Alpert*, (E. D. N. Y. 1916) 237 Fed. 295.

Embezzlement.—A claim against the president of a corporation for money embezzled by him is not released by the discharge of such officer in bankruptcy. *Floyd v. Layton*, (1916) 172 N. C. 64, 89 S. E. 998.

Fiduciary capacity.—The term "fiduciary capacity" embraces technical trusts only and not implied trusts. *Enosburg Falls Nat. Bank v. Bamforth*, (1916) 90 Vt. 75, 96 Atl. 600.

Where goods are consigned under a contract providing that title thereto remains in the consignor, the consignee to hold the proceeds of any sale separate and a part in trust for the use and benefit of the consignor, the consignee is not acting in a fiduciary capacity within the meaning of this provision. *Michelin Tire*

Co. v. Hearn, (Tex. Civ. App. 1916) 188 S. W. 943.

A debt created by fraud, embezzlement, misappropriation, or defalcation, while acting in a fiduciary capacity, will not be released by a discharge in bankruptcy. *Arnold v. Smith*, (1917) 137 Minn. 364, 163 N. W. 672.

Factor, commission merchant, etc.—A debt due by a commission merchant is not one accruing in a fiduciary capacity and, though such a person converts the proceeds of goods sold on commission, the liability thus arising does not come within the exception in this provision. *Butler-Kyser Mfg. Co. v. Mitchell*, (1915) 195 Ala. 240, 70 So. 665.

Vol. I, p. 734, sec. 18a.

Irregularities in proceedings.—As to the distinction between irregularities in proceedings leading to the adjudication which are mere errors of procedure and not jurisdictional defects, see *In re Sage*, (E. D. Mo. 1915) 224 Fed. 525.

Petition—Sufficiency.—The sufficiency of a petition in involuntary bankruptcy in respect to the description of the claim of the petitioners is to be tested by the rules of pleading which would govern a declaration or a bill in equity in an action or suit brought to enforce such claims. *Doty v. Mason*, (S. D. Fla. 1917) 244 Fed. 587.

A petition has been held sufficient though it only alleges that a confession of judgment was made within an intent to prefer, without setting forth the facts and circumstances from which such intent may be inferred. *In re Musgrove Min. Co.*, (E. D. Idaho 1916) 234 Fed. 99.

Amendment of petition.—Where a defect is easily amendable, the petition will not be dismissed without opportunity afforded the petitioners to make the required amendment. *Doty v. Mason*, (S. D. Fla. 1917) 244 Fed. 587.

The exercise of the jurisdiction to amend is within the sound discretion of the court, having in mind the interests of the creditors. *International Silver Co. v. New York Jewelry Co.*, (C. C. A. 6th Cir. 1916) 233 Fed. 945, 147 C. C. A. 619.

The fact that an application to amend a petition is not in writing does not affect jurisdiction to act thereon where notice has been waived by express written consent to the amendment. *International Silver Co. v. New York Jewelry Co.*, (C. C. A. 6th Cir. 1916) 233 Fed. 945, 147 C. C. A. 619.

In the case of *In re Frank*, (C. C. A. 3d Cir. 1917) 239 Fed. 709, 152 C. C. A. 543, it appeared that the original petition contained positive averments (not averments on information and belief) that the acts of bankruptcy charged had been committed, and the amended petition con-

tains the same averments. The Circuit Court of Appeals, on an appeal from an order dismissing the petition in bankruptcy, said: "The record before us does not show what the petitioners testified to during the trial, but the trial judge (who heard this testimony) evidently regarded it as a contradiction of 'the facts now sworn to, that is, the facts presented to him on the formal application to amend. He based his refusal, at least in part, on this contradiction, and as we have no means of reviewing the correctness of his statement we accept it as true. If true, the court was asked to permit the filing of an amended petition in which the petitioners swore to positive averments of fact, although they had already testified that they had no such knowledge as would justify the averments. In refusing to allow the appellants to take such a contradictory attitude, we cannot say that the court abused its discretion, and accordingly the orders appealed from are affirmed."

Verification.—While an amendment does not affirmatively appear to have been verified as required by General Order in Bankruptcy No. XI, yet where the order stated that "said amendment was made accordingly on the face of the bill," meaning, of course, the petition—it was within the power of the court to permit verification later. *International Silver Co. v. New York Jewelry Co.*, (C. C. A. 6th Cir. 1916) 233 Fed. 945, 147 C. C. A. 619.

Mode of service—Defective service—Waiver.—See to same effect as original annotation, *In re Continental Engine Co.*, (C. C. A. 7th Cir. 1916) 234 Fed. 58, 148 C. C. A. 74.

Service on Sunday.—Service of subpoena and of copy of petition in an involuntary bankruptcy proceeding may be made upon a Sunday. *Lamar-Wells Co. v. Hamilton Co.*, (C. C. A. 5th Cir. 1916) 237 Fed. 54, 150 C. C. A. 256.

Dismissal of proceedings—Suit pending in state court.—The fact that a suit is pending in a state court between one of the petitioners in the bankruptcy proceedings and the indorsers on a note is not a sufficient ground for the dismissal of the proceedings. *Doty v. Mason*, (S. D. Fla. 1917) 244 Fed. 587.

Vol. I, p. 738, sec. 18b.

Right to appear and plead.—From the fact that the Bankruptcy Act (section 18b) makes express provision for the exercise by the bankrupt or by any creditor of a right to appear and plead to a petition for involuntary bankruptcy it does not follow that it was a purpose of the Act to withhold from the court of bankruptcy the power of permitting participation in the proceedings by other parties shown to be interested in the result of them. *Jackson v. Wauchula Mfg., etc., Co.*, (C.

C. A. 5th Cir. 1916) 230 Fed. 409, 144 C. C. A. 409, wherein the liability to the petitioner was for a personal injury not "wilful or malicious."

Vol. I, p. 740, sec. 18c.

Amendment.—Where the certificate of the notary is a falsification that is no verification and the petition cannot be amended. *In re Frank*, (E. D. Pa. 1916) 23 Fed. 665.

Vol. I, p. 741, sec. 18d.

Effect of adjudication.—An adjudication, of itself, imports the existence of all the jurisdictional facts. *Anderson v. Stayton State Bank*, (1916) 82 Ore. 357, 159 Pac. 1033.

Exclusive jurisdiction.—"Where a valid adjudication of bankruptcy has been made by court of bankruptcy, the jurisdiction of that court to administer the property of the bankrupt is exclusive, and it cannot properly surrender its jurisdiction to any other court." *In re Sage*, (E. D. Mo. 1915) 224 Fed. 525.

Where a surviving partner has been adjudicated a bankrupt this carries with it the entire rights and obligations of the firm as it existed prior to the copartner's death. *In re Stringer*, (E. D. N. Y. 1916) 234 Fed. 454.

Effect on assignment.—If an adjudication in bankruptcy follows an assignment for the benefit of creditors it has the effect of automatically and of its own force avoiding the assignment. *In re Neuberger*, (C. C. A. 2d Cir. 1917) 240 Fed. 947, 153 C. C. A. 633.

Vacating adjudication.—Proceedings in bankruptcy are in rem, binding all parties interested in the bankrupt's property. If a creditor desires to vacate an adjudication, and his motion is addressed to the sound discretion—that is, the judicial discretion—of the judge, it is incumbent upon him to show that the vacation of the adjudication would result in benefit to him; i. e., that on trial of the issue tendered the result would probably be favorable to his contention. *Abbott v. Wauchula Mfg., etc., Co.*, (C. C. A. 5th Cir. 1917) 240 Fed. 938, 153 C. C. A. 624.

In a voluntary proceeding, where an adjudication in bankruptcy immediately follows the filing of a petition good on its face, without opportunity to any interested person to question the allegations of the petitioner, it seems to be entirely settled that allegations as to residence, domicile, and principal place of business are jurisdictional matters, and a petition to vacate upon the ground that the court obtained no jurisdiction of the subject-matter, if these facts are not as alleged, is the correct practice. *In re San An-*

tonio Land, etc., Co., (S. D. N. Y. 1916) 228 Fed. 984.

Jurisdictional grounds.—Where the petition is in due form and is properly verified, and avers all the jurisdictional and other facts essential to entitle the petitioner to have an order entered adjudicating it bankrupt, after the adjudication has been made, any party who has the requisite interest in the proceedings may move to vacate the adjudication upon jurisdictional grounds. *In re Hargadine-McKittrick Dry Goods Co.*, (E. D. Mo. 1917) 239 Fed. 155.

Vol. I, p. 746, sec. 18g.

Simultaneous pendency of voluntary and involuntary proceedings.—While the mere pendency of the involuntary petition does not take away jurisdiction to entertain the voluntary petition and to adjudicate thereunder, the duty arises to choose the course for the best interests of creditors. In many cases such interests are best subserved by adjudicating upon a voluntary petition, thus saving delay, litigation and expense in procuring an adjudication; but notice of the filing of the voluntary petition should be given to the petitioning creditors, and opportunity thus afforded to determine the course most likely to conserve the interests of the estate. The fact, however, that adjudication was made under the voluntary petition did not preclude jurisdiction to protect the rights of creditors under the involuntary petition. *International Silver Co. v. New York Jewelry Co.*, (C. C. A. 6th Cir. 1916) 233 Fed. 945, 147 C. C. A. 619. See also *In re Continental Coal Corp.*, (C. C. A. 6th Cir. 1916) 238 Fed. 113, 151 C. C. A. 189.

Vol. I, p. 748, sec. 19a.

Right to trial by jury.—In an action at law to recover alleged preferential cash payments, the defendant has a right to have the suit tried by jury, and unless such right has been either expressly or impliedly waived a reference to the master is unauthorized. *Wm. Edwards Co. v. La Dow*, (C. C. A. 6th Cir. 1916) 230 Fed. 378, 144 C. C. A. 520.

Where the distribution of the fund is the only issue before the court, there is no question, under the Bankruptcy Act or other law, to be submitted to a jury for determination. *In re Gibbons*, (W. D. Wash. 1915) 225 Fed. 420.

Waiver of right to jury trial—Failure to demand.—"It is the general and well-settled rule that parties are presumed to have waived a jury, even in the absence of written stipulation, whenever it appears that they were present at the trial in person or by counsel and made no demand for a jury." *Wm. Edwards Co. v.*

La Dow, (C. C. A. 6th Cir. 1916) 230 Fed. 378, 144 C. C. A. 520.

Where a bankrupt answered petitions against him denying both insolvency and acts of bankruptcy, but did not ask for a jury trial and an order was immediately entered directing the referee to hear the issues as special master, it was held that the refusal of a separate demand filed on the next court day but one was not an abuse of discretion. *In re Wester*, (C. C. A. 3d Cir. 1917) 242 Fed. 465, 155 C. C. A. 241.

Vol. I, p. 751, sec. 21a.

Right of examination.—It is now settled by the Supreme Court, notwithstanding many decisions in the lower courts to the contrary, that the moment a petition in bankruptcy is filed, whether voluntary or involuntary, and a receiver appointed, the administration of the estate has begun, and an order may be granted under section 21a for the examination of the bankrupt or any designated witness or witnesses. *In re Emigh*, (N. D. N. Y. 1917) 243 Fed. 988.

Scope of examination.—*Issue of solvency*.—"It would be a perversion of the purpose of section 21a to exercise the power it confers to obtain evidence for use on the trial of the issue of solvency or insolvency. Section 3b contains the provision applicable to the examination of the alleged bankrupt with reference to that issue. *Rawlins v. Hall-Epps Clothing Co.*, 217 Fed. 884, 133 C. C. A. 594; *Cameron v. United States*, 231 U. S. 710, 34 Sup. Ct. 244, 58 L. ed. 448. By the terms of the last-mentioned provision the only effect given to the alleged bankrupt's failure to attend and submit to the examination provided for is that 'the burden of proving his solvency shall rest upon him.'" *Abbott v. Wauchula Mfg., etc., Co.*, (C. C. A. 5th Cir. 1916) 229 Fed. 677, 144 C. C. A. 87.

Conduct of examination.—*Competency of wife*.—The competency of a wife to testify against her husband in a civil proceeding under this Act, is determined by state law. *In re Kessler*, (E. D. Pa. 1915) 225 Fed. 394.

Books and papers.—Where a state law gives to a private banker the right to apply within a certain number of days for a restitution of possession of papers and books seized by the state banking department, the privilege thus conferred must be asserted or it is lost and it has been held that the court will not direct the state district attorney to deliver such papers and books to the receiver in bankruptcy. *In re Mandel*, (S. D. N. Y. 1915) 224 Fed. 643.

Right of witness to counsel.—Supplementing the original note, see *In re Emigh*, (N. D. N. Y. 1917) 243 Fed. 988.

Vol. I, p. 757, sec. 21e.

Force of order.—A certified copy of an order showing approval of the trustee's bond is under this section conclusive evidence of the vesting in him of title to the property of the bankrupt. *Anderson v. Stayton State Bank*, (1916) 82 Ore. 357, 159 Pac. 1033.

Vol. I, p. 757, sec. 21f.

Certified copy of order as evidence.—In a suit against the bankrupt, subsequent to his discharge, upon a debt existing at the time of the filing of the petition, the production of a certified copy of the order of discharge makes a prima facie defense, and the burden is cast upon the plaintiff to show that his debt came within the exceptions. *Claffin v. Wolff*, (1915) 88 N. J. L. 308, 96 Atl. 73.

Where a discharge in bankruptcy is pleaded as a defense to an action, and the plea is traversed, the burden is upon the defendant to prove his discharge; and, to carry this burden, he must put in evidence a certified copy of the order granting the discharge. *Williams v. Millen First Nat. Bank*, (Ga. 1917) 94 S. E. 73.

Vol. I, p. 759, sec. 23a.

Adverse claimants.—Where facts are undisputed, and only a question of law is involved, and the question of law is debatable, the person resisting is not an adverse claimant. *Alco Film Corp. v. Alco Film Service*, (C. C. A. 2d Cir. 1916) 234 Fed. 55, 148 C. C. A. 71.

Jurisdiction of state court.—This section does not have the effect of depriving a state court of jurisdiction of a suit brought by a third party claiming title, and right of possession of property, though the trustee claims that the property in his actual possession as trustee, as an asset of the estate where it appears that the Bankruptcy Court never by summary process, or any kind of process, took actual possession of the property, and never by writ or otherwise authorized the trustee to do so, and never claimed possession of it as an asset of the estate. *Peters v. Bowers*, (1916) 61 Colo. 534, 158 Pac. 1101.

Vol. I, p. 759, sec. 23b.

- I. Jurisdiction of adverse claims.
- II. Jurisdiction as affected by possession.
- III. Jurisdiction by consent.
- IV. Recovery of preferential and fraudulent transfers.
- V. Summary and plenary jurisdiction.
- VI. Jurisdiction of state courts.

I. JURISDICTION OF ADVERSE CLAIMS (p. 761)

Bona fide adverse claims.—"Claims made after petition filed, but arising be-

fore that time, constitute adverse claims, when the fund is in possession of one who makes no adverse claim." *In re Inter-ocean Transp. Co.*, (S. D. N. Y. 1916) 232 Fed. 408.

Jurisdiction—Rule stated.—"We understand the rule in all such cases to be that if a real adverse claim exists, as distinguished from one which is merely colorable, the claimant cannot be compelled against his will to try the issue in the court of bankruptcy. Whether the claim is real or colorable does not depend upon whether it turns upon a question of fact or upon a question of law. Does the claim rest upon mere pretense of fact or of law? Is it put forward in good faith, and in that sense is it real? Or is it put forward in bad faith, and therefore unreal? If there is a real question either of law or of fact, the claimant need not submit it to the court of bankruptcy, unless he consents to do so; but the trustee must institute his independent action in a court having jurisdiction of the subject-matter and have the claim regularly adjudicated, as the bankrupt himself must have done, had bankruptcy proceedings not been pending." *In re Midtown Contracting Co.*, (C. C. A. 2d Cir. 1917) 243 Fed. 56, 155 C. C. A. 586.

Adverse claimant.—A petitioning creditor who after adjudication has received money the title to which has already passed by operation of law to the trustee has been held not to be an adverse claimant. *In re Ward*, (N. D. Cal. 1917) 242 Fed. 999.

II. JURISDICTION AS AFFECTED BY POSSESSION (p. 765)

Possession of property gives jurisdiction thereover.—See to same effect as original annotation, *In re Cobb's Consol. Cas.* (D. C. Mass. 1916) 233 Fed. 458; *In re Dialogue*, (D. C. N. J. 1916) 241 Fed. 290.

"It is well settled that the general rule, that possession of the res vests the court which has first acquired jurisdiction with power to hear and determine all conveyances relating thereto, and for the time being disables other courts of co-ordinate jurisdiction from exercising a like power, and from interfering with the former court, is applicable to courts of bankruptcy." *In re Schmidt*, (D. C. N. J. 1915) 224 Fed. 814.

"A Bankruptcy Court has no authority or jurisdiction, in the absence of lawful possession of the property by its officers, to draw to itself and determine in a summary proceeding the adverse claim of one claiming for his own benefit a lien upon or title to property of the bankrupt which was created, or is claimed to have been created, otherwise than by the legal proceeding specified in sections 67c, 67f, prior to the filing of the petition in

bankruptcy." *American Trust, etc., Bank v. Ruppe*, (C. C. A. 8th Cir. 1916) 237 Fed. 581.

Possession through agreement.—The fact that control of property after it had been relinquished by the trustee under a decree of court was only regained through agreement of the party into whose possession the property had been surrendered, does not impair the jurisdiction of the court to determine the ownership thereof. *In re Traunstein*, (D. C. Mass. 1915) 225 Fed. 317.

III. JURISDICTION BY CONSENT (p. 767)

Effect of consent.—See to same effect as original annotation, *Jones v. Blair*, (C. C. A. 4th Cir. 1917) 242 Fed. 783, 155 C. C. A. 371.

IV. RECOVERY OF PREFERENTIAL AND FRAUDULENT TRANSFERS (p. 769)

Jurisdiction to recover property fraudulently or preferentially transferred.—See to same effect as original annotation, *Winslow v. Staab*, (S. D. N. Y. 1916) 233 Fed. 305.

Suit against transferee of property.—In a case where a creditor of the bankrupt accepted goods in payment of some of the indebtedness to him the court said: "His claim of right to such goods is of substance, and not a mere fictitious or colorable one. The question whether he obtained a preference in such transaction or whether it was tainted with fraud are not pertinent upon the issue whether such creditor is an adverse claimant. The referee had jurisdiction to issue the rule to show cause, there being sufficient in the affidavits upon which such rule was based to justify the inquiry; but as soon as it developed that a transfer of property from the bankrupts to one of their creditors had been made, to discharge some of their indebtedness to him, and that such creditor refused his consent to the referee's inquiring into the legality of such transaction in a summary way, it was the duty of the referee to stay such proceedings and remit the trustee to a plenary suit under section 23b of the Bankruptcy Act. . . . As such creditor never consented to such summary jurisdiction, but always protested against it, the order under review is reversed, and the cause remanded, that proceedings plenary in their nature may be instituted, if the same be deemed advisable." *In re Vallozza*, (D. C. N. J. 1915) 225 Fed. 334.

V. SUMMARY AND PLENARY JURISDICTION (p. 770)

General principles controlling jurisdiction.—Supplementing the original note, see *In re Flanigan*, (E. D. Pa. 1915) 228 Fed. 339.

Summary jurisdiction.—See to same effect as original annotation, *Courtney v.*

Shea, (C. C. A. 6th Cir. 1915) 225 Fed. 358, 140 C. C. A. 382.

"The District Court sitting in bankruptcy has jurisdiction to draw to itself and to determine by summary proceedings after reasonable notice to the claimants all controversies between the trustee and adverse claimants over liens upon and the title and possession of (1) property in the possession of the bankrupt when the petition in bankruptcy is filed, (2) property held by third parties for him, (3) property lawfully seized by the marshal as the bankrupt's under clause 3 of section 2 of the Bankruptcy Law, and (4) property claimed by the trustee which has been lawfully reduced to actual possession by the officers of the court." *Darrough v. Claremore First Nat. Bank*, (Okla. 1916) 156 Pac. 191.

Jurisdiction in summary proceedings, being of statutory authority, and based upon necessity to prevent threatened loss to the rightful owners of property, or defiant disobedience to the orders and decrees of courts, should not be enlarged by construction or implication. *In re Cox-Rackley Co.*, (E. D. N. C. 1917) 245 Fed. 367.

Possession as requisite to summary jurisdiction.—The summary jurisdiction of the court can be sustained only when the Bankruptcy Court, through the acts of its officers, such as referees, receivers, or trustees, has taken possession of the res as the property of the bankrupt. *In re Schmick Handle, etc., Co.*, (D. C. Me. 1916) 233 Fed. 446.

Where the claimant has submitted to the jurisdiction of the court, and has placed the funds in the hands of the officers of the court, summary process is the proper method to determine the final ownership of the fund. *In re Schmick Handle, etc., Co.*, (D. C. Me. 1916) 233 Fed. 446.

Where book accounts have been assigned to a creditor prior to bankruptcy and collections have been made thereon, the assignee's possession prevented such collections from becoming a part of the res which passed into custodia legis with the filing of the petition in bankruptcy and in the absence of consent or waiver these collections cannot be recovered by summary action in proceedings before a referee. But as to uncollected accounts it has been held that the referee has jurisdiction to summarily determine the right thereto. *In re Gottlieb*, (D. C. N. J. 1917) 245 Fed. 139.

Bona fide adverse claim.—A federal court may not in summary proceedings determine the sufficiency of a truly adverse claim, but the court has granted similar relief where the claim, made by the possessor of the property, after fraudulent transfer, is founded upon patent and fla-

grant fraud. *In re Resnek*, (S. D. N. Y. 1917) 246 Fed. 879.

"The courts have held in numerous cases that a stranger to the proceedings in bankruptcy, who sets up an adverse title to property which is claimed by the trustee as assets of the bankrupt, cannot be compelled to submit his claim to adjudication in a summary proceeding in the court of bankruptcy provided his claim is made with the apparent intention of defending it in good faith and is not merely colorable, but is entitled to be heard in a plenary suit." *In re Midtown Contracting Co.*, (C. C. A. 2d Cir. 1917) 243 Fed. 56, 155 C. C. A. 586.

The title to property in the possession of a third party under a claim adverse to that of the bankrupt estate cannot be asserted in summary proceedings. *In re Flanigan*, (E. D. Pa. 1915) 228 Fed. 339.

Effect of failure to object to jurisdiction.—Acquiescence in summary proceedings may operate as a waiver of the right to object. *In re Hopkins*, (C. C. A. 2d Cir. 1916) 229 Fed. 378, 143 C. C. A. 498.

Necessity of plenary action.—See to same effect as original annotation, *Courtney v. Shea*, (C. C. A. 6th Cir. 1915) 225 Fed. 358, 140 C. C. A. 382. *In re McCracken*, (S. D. Cal. 1916) 234 Fed. 776; *In re Vocks*, (W. D. Ky. 1917) 242 Fed. 963.

Effect of amendments of 1903 and 1910.—The jurisdiction of a plenary suit by a trustee to recover a debt due from the bankrupt's estate as it stood before the amendments of 1903 and 1910 has been unaffected by those amendments. *De Friece v. Bryant*, (E. D. Ky. 1916) 232 Fed. 233.

Suit against adverse claimant.—A federal court has no jurisdiction of plenary suit by the trustee in bankruptcy against an adverse claimant, save as provided in section 23b. *De Friece v. Bryant* (E. D. Ky. 1916) 232 Fed. 233.

Suit against stockholder.—A proceeding as against the individual stockholder upon his refusal to pay his delinquent subscription is not a mere proceeding in bankruptcy for the collection of the assets of the estate, but a suit plenary in its nature and subject to all the limitations expressed in section 23b of the Bankruptcy Act. *Kelley v. Aarons*, (S. D. Cal. 1917) 238 Fed. 996.

Action for concealment or conversion by bankrupt and agents.—See *Jones v. Blair*, (C. C. A. 4th Cir. 1917) 242 Fed. 783, 155 C. C. A. 371; *Jones v. Blair*, (C. C. A. 4th Cir. 1917) 242 Fed. 783, 155 C. C. A. 371.

Application of General Order XXXVII.—General Order XXXVII applies only to equity proceedings, properly so called, and not to summary proceedings in bankruptcy. Even in summary proceedings the court allows the respondent full oppor-

tunity for hearing and defense, but it is not limited by the technical rules. *In re Cunney*, (D. C. Mass. 1904) 225 Fed. 426.

VI. JURISDICTION OF STATE COURTS (p. 772)

Failure or refusal to assert jurisdiction.—Where it appears that the federal court has not only failed to assert exclusive jurisdiction, but also that it has refused to assert or claim it, the state court before which a general creditor's bill is pending not only may, but should proceed to a determination of the questions before it. *Morgan v. Dayton Coal, etc., Co., Tenn.* (1916) 134 Tenn. 228, 183 S. W. 1019, Ann. Cas. 1917E 42.

Property in lawful possession of state court.—Where the debtor's property is in the hands of receivers appointed by a state court and its assets are being administered satisfactory to a large majority of the creditors, a petition by a small minority to have the debtor adjudged a bankrupt will be dismissed, it also appearing that bankruptcy proceedings would enure only to the detriment of the creditors generally. *In re McKinnon Co., (E. D. N. C. 1916)* 237 Fed. 869.

The court which first assumed control and had jurisdiction of the property or fund may retain it all for the purpose of a final order or decree where the rights of the parties urging claims that conflict with one another on the same property or fund would be the same whether presented in the state court or in Bankruptcy Court. *Pietri v. Wells, (1915)* 137 La. 1087, 68 So. 847.

Vol. I, p. 774, sec. 24a.

II. Controversies arising in bankruptcy proceedings.

V. Bankruptcy courts not within organized circuit.

II. CONTROVERSIES ARISING IN BANKRUPTCY PROCEEDINGS (p. 776)

In general—Intervention.—An intervention in bankruptcy proceedings where claimants assert liens against particular funds has been held to give rise to a controversy in bankruptcy proceedings within the meaning of this section. *Emerson v. Castor, (C. C. A. 6th Cir. 1916)* 236 Fed. 29, 149 C. C. A. 239.

The appearance of the mortgagees in response to notice of the petition of the mortgagor's trustee in bankruptcy for the marshaling of assets, the sale of the encumbered property, and the application of the proceeds to the payment of all liens thereon, and their assertion of their conflicting rights under their respective mortgages, and their attempt to have them enforced against the proceeds, has been held to be the equivalent of an affirmative intervention, and when taken in connection

with the trustees' petition, brought into the bankruptcy proceedings a "controversy," over which the Circuit Court of appeals was vested, by the Bankrupt Act of July 1, 1898, (30 Stat. at L. 544, chap. 541) § 24, with the same appellate jurisdiction which, under the Judicial Code, § 128, it possesses in other cases. *Moody v. Century Sav. Bank, (1915)* 239 U. S. 374, 36 S. Ct. 111, 60 U. S. (L. ed.) 336.

Dismissal of petition made by trustee.—Where the issues made in the petition and return were (1) the title of the trustee to certain assets claimed by him to be in existence as part of the bankrupt estate, which the bankrupts claimed should not have embraced in their schedules, and which, they joined their agents in saying, were either not assets at all, or were assets belonging to their agents; and (2) an accounting by the bankrupts and their agents for the proceeds of cotton and other property disposed of, it was said that the questions were not solely between the bankrupts or the trustee and their creditors, but between the trustee and the bankrupts, and also the bankrupts' agents, and it was clearly a "controversy arising in bankruptcy proceedings," as distinguished from a "proceeding in bankruptcy," and therefore is properly here by appeal under section 24a, rather than by petition to superintend and revise under section 24b. *Jones v. Blair, (C. C. A. 4th Cir. 1917)* 242 Fed. 783, 155 C. C. A. 371.

Jurisdictional amount.—The jurisdiction given by this section is not in terms affected by the amount involved. *Emerson v. Castor, (C. C. A. 6th Cir. 1916)* 236 Fed. 29, 149 C. C. A. 239.

Mode of appeal.—Where there is a doubt as to the correct procedure for obtaining a review of an order both the methods provided by sections 24a and 24b may be resorted to in which case the court must determine which of the two it is authorized to entertain. *In re Creech Bros. Lumber Co., (C. C. A. 9th Cir. 1917)* 240 Fed. 8, 153 C. C. A. 44.

Decisions held appealable.—A decree directing the payment to the trustee of the proceeds of the sale of a stock of goods on which a creditor, a bank, claimed a lien. *Scandinavian-American Bank v. Sabin, (C. C. A. 9th Cir. 1916)* 227 Fed. 579, 142 C. C. A. 211.

A controversy as to the ownership of a fund claimed by the trustee and the appellee. *Wuerpel v. Commercial Germania Trust, etc., Bank, (C. C. A. 5th Cir. 1917)* 238 Fed. 269, 151 C. C. A. 285.

An order allowing a claim as a preferred claim. *In re Creech Bros. Lumber Co., (C. C. A. 9th Cir. 1917)* 240 Fed. 8, 153 C. C. A. 44.

Decisions held not appealable.—An order made ostensibly in a bankruptcy proceeding, allowing counsel fees. *In re*

Jacobson, (C. C. A. 3d Cir. 1917) 239 Fed. 79, 152 C. C. A. 129.

An order relating to a claim secured by a lien on the assets of the bankrupt. *In re Monarch Acetylene Co.*, (C. C. A. 2d Cir. 1917) 245 Fed. 741, 158 C. C. A. 143.

V. BANKRUPTCY COURTS NOT WITHIN ORGANIZED CIRCUIT (p. 790)

"From the Supreme Court of the District of Columbia."—Proceedings resulting in a decree adjudging a person not to be a bankrupt are but steps in a bankruptcy proceeding. They are not controversies arising in those proceedings, within the meaning of this provision, confining the appellate jurisdiction of the federal Supreme Court over the Supreme Court of the District of Columbia in bankruptcy proceedings to controversies arising in such proceedings. *Swift v. Hoover*, (1916) 242 U. S. 107, 37 S. Ct. 56, 61 U. S. (L. ed.) 175, *overruling* *Audubon v. Shufeldt*, (1901) 181 U. S. 575, 21 S. Ct. 735, 45 U. S. (L. ed.) 1009.

Vol. I, p. 791, sec. 24b.

Appeal or petition to revise as exclusive or optional right.—See to same effect as original annotation, *In re Creech Bros. Lumber Co.*, (C. C. A. 9th Cir. 1917) 240 Fed. 8, 153 C. C. A. 44.

It is now the settled law of this circuit that the remedies by appeal and petition to revise are mutually exclusive. *Henkin v. Fousek*, (C. C. A. 8th Cir. 1917) 246 Fed. 285, 159 C. C. A. 15.

Where there is a doubt as to the correct procedure for obtaining a review of an order both the methods provided by sections 24a and 24b may be resorted to, in which case the court must determine which of the two it is authorized to entertain. *In re Creech Bros. Lumber Co.*, (C. C. A. 9th Cir. 1917) 240 Fed. 8, 153 C. C. A. 44.

Appeal united with petition.—Resort may be had to both appeal and petition to bring up for review rulings complained of, in order to avoid a mistake in remedy. *Chavalle v. Washington Trust Co.*, (C. C. A. 9th Cir. 1915) 226 Fed. 400, 141 C. C. A. 230.

Time for filing petition.—A petition to revise must be taken within ten days after the original order was entered. *In re John M. Linck Constr. Co.*, (C. C. A. 2d Cir. 1915) 225 Fed. 488, 140 C. C. A. 18.

A petition to revise an order making an allowance to the trustee's attorney must be taken within ten days after the order was entered. *In re John M. Linck Constr. Co.*, (C. C. A. 2d Cir. 1915) 225 Fed. 488, 140 C. C. A. 18.

The petition to revise will be dismissed where it is not brought within ten days after entry of the order sought to be re-

viewed as prescribed by equity rule 38. *In re Vanoscope Co.*, (C. C. A. 2d Cir. 1916) 233 Fed. 53, 147 C. C. A. 123.

When no rule of court prescribes time.—There are no terms in bankruptcy, and no provision in the statute limiting the time within which an order of the referee may be reviewed or an order of the District Court reheard, and where there is no rule of court a proceeding to revise will not be regarded as too late. *In re Barker Piano Co.*, (C. C. A. 2d Cir. 1916) 233 Fed. 522, 147 C. C. A. 408.

"Matter of law."—A proceeding which may be revised in matters of law means some formal exercise of judicial power affecting asserted rights of a party. *In re Berthoud*, (C. C. A. 2d Cir. 1916) 238 Fed. 797, 151 C. C. A. 647.

Only questions of law can be considered. *Hall v. Reynolds*, (C. C. A. 8th Cir. 1915) 224 Fed. 103, 139 C. C. A. 659; *Henkin v. Fousek*, (C. C. A. 8th Cir. 1917) 246 Fed. 285, 159 C. C. A. 15; *In re Nankin*, (C. C. A. 2d Cir. 1917) 246 Fed. 811, 159 C. C. A. 113.

And the court is limited to a consideration of the question of law arising out of the facts found or conceded. *Kinhead v. Bacon*, (C. C. A. 6th Cir. 1916) 230 Fed. 362, 144 C. C. A. 504.

And where a case involves a consideration and finding of facts it must be disposed of on appeal and not by petition to revise. *Henderson v. Morse*, (C. C. A. 8th Cir. 1916) 235 Fed. 518, 149 C. C. A. 64.

Reviewing testimony.—On a petition to revise the court is neither required nor permitted to review the testimony. *Olmsted-Stevenson Co. v. Miller*, (C. C. A. 9th Cir. 1916) 231 Fed. 69, 145 C. C. A. 257. See also *Olmsted-Stevenson Co. v. Langsdorf*, (C. C. A. 9th Cir. 1916) 231 Fed. 76, 145 C. C. A. 264; *Wm. R. Moore Dry Goods Co. v. Brooks*, (C. C. A. 8th Cir. 1917) 240 Fed. 943, 153 C. C. A. 629.

Sufficiency of evidence.—A review of all controverted and uncontroverted facts to determine whether there is any substantial evidence to sustain the order, is a review as to a matter of law within the provisions of section 24b of the Bankruptcy Act, is well settled. *In re Kuhn*, (C. C. A. 7th Cir. 1916) 234 Fed. 277, 148 C. C. A. 179.

Questions and orders reviewable or not reviewable on petition.—*Finality of order necessary.*—"There must be a certain degree of finality about these administrative orders before they can be reviewed; if every order were reviewable, proceedings could easily be so tied up and prolonged that the situation would become intolerable. But where a fairly separable subject has been finally disposed of, so that rights have been definitely determined, and practically nothing remains to be done in that respect, such a subject is ready

for review." *In re Pechin*, (C. C. A. 3d Cir. 1915) 227 Fed. 853, 142 C. C. A. 377.

An order of the District Court refusing to allow a specification of objection to discharge to be filed or to be amended has sufficient finality to permit of its being reviewed. *In re Pechin*, (C. C. A. 3d Cir. 1915) 227 Fed. 853, 142 C. C. A. 377.

Order setting aside discharge.—An order setting aside a discharge is not one denying a discharge within the meaning of section 25a(2), and the appropriate remedy is one to superintend and revise in matter of law under section 24b. *In re Jacobs*, (C. C. A. 6th Cir. 1917) 241 Fed. 620, 154 C. C. A. 378.

Order as to intervention.—An order of the Bankruptcy Court, granting or refusing to grant leave to a party to intervene for the purpose of contesting the grounds upon which an adjudication in an involuntary bankruptcy proceeding is sought, may be reviewed on a petition to revise. *Ogden v. Gilt Edge Consol. Mines Co.*, (C. C. A. 8th Cir. 1915) 225 Fed. 723, 140 C. C. A. 597.

Review of order denying motion to vacate adjudication.—There is some question as to whether the review of an order denying a motion to vacate an adjudication in bankruptcy should be by appeal or by petition to revise; but the weight of authority seems to support the proposition that the review is by petition to revise. *In re Vanoscope Co.*, (C. C. A. 2d Cir. 1916) 233 Fed. 53, 147 C. C. A. 123.

As an order denying the application of a creditor to have the judgment of the court adjudicating the debtor a bankrupt vacated and set aside is not appealable, it seems that as to matters of law it may be reviewed by a petition to revise. *Hart-Parr Co. v. Barkley*, (C. C. A. 8th Cir. 1916) 231 Fed. 913, 146 C. C. A. 109.

Order setting aside discharge.—In the case of an order setting aside a discharge the proper remedy is one to superintend and revise in matter of law where the creditor objects to a consideration of any of the facts and relies solely on questions of law. *In re Jacobs*, (C. C. A. 6th Cir. 1917) 241 Fed. 620, 154 C. C. A. 378.

An order fixing the compensation of a referee involves a "proceeding in bankruptcy" and is reviewable under this section. *Kinhead v. Bacon*, (C. C. A. 6th Cir. 1916) 230 Fed. 362, 144 C. C. A. 504.

Order in omnibus proceeding.—A petition to revise is the proper remedy to review an order in an omnibus proceeding, begun to determine the rights of various claimants to property in the hands of a receiver. *In re Pierson*, (C. C. A. 2d Cir. 1916) 233 Fed. 519, 147 C. C. A. 405.

An order requiring a bankrupt to turn over a specified amount of money to the trustee in bankruptcy is a step in bankruptcy proceedings reviewable by petition

to revise under section 24b. *In re Shidlovsky*, (C. C. A. 2d Cir. 1915) 224 Fed. 450, 140 C. C. A. 654.

Injunction order.—Where the merits of a claim, the prosecution of an action for which has been enjoined, have not been decided, it has been decided that a petition to revise the injunction order and not appeal, is the proper remedy. *Orinoco Iron Co. v. Metzel*, (C. C. A. 6th Cir. 1916) 230 Fed. 40, 144 C. C. A. 338.

Allowance of counsel fees.—This section provides the applicable mode of review of an order denying an allowance for counsel fees for services rendered in resisting a confirmation of a composition. *In re Kinnane Co.*, (C. C. A. 6th Cir. 1917) 242 Fed. 769, 155 C. C. A. 357.

Where the only questions involved were questions of fact as to whether an allowance to attorneys was a reasonable compensation for the services rendered by them and whether the allowance should be apportioned by the court it was held that there were no questions of law for the court to revise. *Hall v. Reynolds*, (C. C. A. 8th Cir. 1916) 224 Fed. 103, 139 C. C. A. 659.

Establishment of lien.—A proceeding in bankruptcy to establish a lien is reviewable by petition to superintend and revise and it is proper to dismiss an appeal. *J. M. Radford Grocery Co. v. Powell*, (C. C. A. 5th Cir. 1915) 228 Fed. 1, 142 C. C. A. 457.

Decree of state court.—A petition to revise is the proper mode to call in question a decree of a state court directing the receiver to surrender possession of the assets after deducting a sum allowed as compensation to the receiver and his attorney. *State v. Angle*, (C. C. A. 8th Cir. 1916) 236 Fed. 644, 149 C. C. A. 640.

Disputed questions of fact.—The court cannot determine any conflicting inferences of fact on a petition to revise an order postponing the claims of the petitioners. *In re Bean*, (C. C. A. 6th Cir. 1916) 230 Fed. 405, 144 C. C. A. 547.

Security for costs on petition to review.—For writs of error at common law, also for the ordinary appeals in equity, the statutes of the United States, or the rules of the courts, make provisions for security for costs on allowance of the citation, or subsequent thereto, but there is said to be no statute, or rule, or any settled practice, giving a right to a respondent or appellee to apply for security for costs on a petition to review matters of law in bankruptcy proceedings. *In re Vidal*, (C. C. A. 1st Cir. 1915) 230 Fed. 603, 145 C. C. A. 13.

Vol. I, p. 812, sec. 25a.

Cases appealable in bankruptcy.—The only cases in which an appeal can be taken in bankruptcy proceedings are those mentioned in section 25a of the Bankruptcy Act. *Ogden v. Gilt Edge Consol. Mines*

Co., (C. C. A. 8th Cir. 1915) 225 Fed. 723, 140 C. C. A. 597.

The claim of a petitioner being for unreturned goods sold on credit has been held to constitute a controversy arising in bankruptcy proceedings, which is appealable under section 25a, and not reviewable under section 24b. *Howard D. Thomas Co. v. Beharrell*, (C. C. A. 9th Cir. 1916) 229 Fed. 691, 144 C. C. A. 101.

Where it appeared that the appellant recognized the title to and possession of a fund in the trustee for administration under the orders of the Bankruptcy Court, and asserted its right to have it so administered or distributed as to recognize its equitable title to the fund it was held that this constituted a proceeding in bankruptcy, as distinguished from a controversy arising in bankruptcy proceedings, within the meaning of sections 25(a) and 24(a), respectively, and as such proceeding it was subject to the provisions of section 25(a), and should have been appealed if at all, in accordance with its provisions. *Barton Lumber, etc., Co. v. Prewitt*, (C. C. A. 8th Cir. 1916) 231 Fed. 919, 146 C. C. A. 115.

Conditional order.—An order which is conditional is not appealable. *In re Sutter Hotel Co.*, (C. C. A. 9th Cir. 1915) 241 Fed. 367, 154 C. C. A. 247.

The dismissal of a rule to compel the conveyance of real estate to the highest bidder has been held to be a step in a bankruptcy proceeding from which no appeal lies. *Untereiner v. Camors*, (C. C. A. 5th Cir. 1916) 228 Fed. 890, 143 C. C. A. 288.

Time for taking appeal.—Where the petition for an appeal, accompanied by an assignment of errors, was filed in the District Court within ten days from the date of the decree, and was promptly presented to a judge having authority to allow the appeal it was held that this was a presentation to the court which made the decree, of the application for an appeal within the time allowed by the statute; and the order allowing the appeal, which was made on the third day after such presentation, had relation back to the date of the application therefor. *Robertson Banking Co. v. Chamberlain*, (C. C. A. 5th Cir. 1916) 228 Fed. 500, 143 C. C. A. 82.

Questions of fact.—In equity cases, under the new rules, appeals present the controversy for determination de novo as under the old rules; but where the trial judge has heard the testimony in open court, his finding of fact should not be disturbed, unless the record very clearly discloses either a misapprehension of the testimony or a mistaken application of the law. *In re Kaplan*, (C. C. A. 7th Cir. 1916) 234 Fed. 866, 148 C. C. A. 464.

Where the trial judge has found as a fact that the debtor was then in a bank-

rupt condition, within the statutory definition, that finding cannot be reviewed in the absence of the evidence on which it was based. *Abele v. Beacon Trust Co.*, (1917) 228 Mass. 438, 117 N. E. 833.

The court on appeal should not reverse the finding of the trial court upon a pure question of fact, where the evidence justifies the finding, even if the Appellate Court might have reached a different conclusion upon the evidence. *Brookheim v. Greenbaum*, (C. C. A. 2d Cir. 1915) 225 Fed. 763, 141 C. C. A. 89.

Findings of referee or master.—"The findings of fact by the master and affirmed by the court are presumptively correct and will be upheld on appeal, if supported by substantial evidence, or unless a clear mistake is shown." *Sheinberg v. Hoffman*, (C. C. A. 3d Cir. 1916) 236 Fed. 343, 149 C. C. A. 475.

Record on appeal.—Under order No. 36 of the General Orders in Bankruptcy, the Circuit Court of Appeals cannot review or reverse the order of the District Court without having before it the testimony or record upon which that court acted. *In re Murphy*, (C. C. A. 9th Cir. 1916) 229 Fed. 988, 144 C. C. A. 270.

Dismissal of appeal.—*Decree appealed from not final or conclusive.*—An appeal from a decree dismissing complainant's claim for a part of the demand set forth in the bill has been dismissed where it is apparent that the decree appealed from does not dispose of the whole case, and it is at least doubtful whether the decree complained of is even final and conclusive in the court below, under the general rule that orders and decrees in chancery may be altered, revised, or revoked during the term at which they were passed, or while the cause remains open for further proceedings. *Wuerpel v. Canal-Louisiana Bank, etc., Co.*, (C. C. A. 5th Cir. 1916) 231 Fed. 934, 146 C. C. A. 130.

Time for taking appeal.—The jurisdiction of the court to entertain an appeal from an adjudication in bankruptcy can only be acquired when the appeal is properly taken within the time prescribed by the statute. *Rhame v. Southern Cotton Oil Co.*, (C. C. A. 4th Cir. 1915) 230 Fed. 403, 144 C. C. A. 545.

Vol. I, p. 824, sec. 25a (1).

Record on appeal.—Under order No. 36 of the General Orders in Bankruptcy the Circuit Court of Appeals cannot review or reverse an order of the District Court denying adjudication and dismissing the petition without having before it the testimony or record upon which that court acted. *In re Murphy*, (C. C. A. 9th Cir. 1916) 229 Fed. 988, 144 C. C. A. 270.

Vol. I, p. 826, sec. 25a (2).

Order setting aside a discharge.—An order setting aside a discharge is not one

denying a discharge within the meaning of section 25a(2) and the appropriate remedy is one to superintend and revise in matter of law under section 24b. *In re Jacobs*, (C. C. A. 6th Cir. 1917) 241 Fed. 620, 154 C. C. A. 378.

An order granting leave to amend specifications of objection to a petition for a discharge does not possess the degree of finality required to permit of its being reviewed. *In re Pechin*, (C. C. A. 3d Cir. 1915) 227 Fed. 853, 142 C. C. A. 377.

Vol. I, p. 826, sec. 25a (3). [*From allowance or rejection of claim.*]

An order allowing a claim as a preferred claim, in excess of the jurisdictional amount which is objected to on the ground that the claim is not a preferred one is appealable under this section. *In re Creech Bros. Lumber Co.*, (C. C. A. 9th Cir. 1917) 240 Fed. 8, 153 C. C. A. 44.

Claim adverse to title of trustee.—Where the claim asserted by the petitioner is adverse to the title of the trustee, the petition to superintend and revise should be dismissed as appeal is the proper remedy. *American Piano Co. v. Heazel*, (C. C. A. 4th Cir. 1917) 240 Fed. 410, 153 C. C. A. 336.

Vol. I, p. 829, sec. 25a (3). [*Time for taking appeal—hearing.*]

Judgment "rendered."—Where the date September 15, 1915, appeared at the end of the order, or judgment, of the District Court, in connection with the signature of the judge; but the filing date and the signature of the court clerk were shown at the commencement of the judgment under the date September 16th, it was held that the filing date rather than the other date, there shown indicated the time of rendition of the judgment in accordance with both the appearance docket and the journal of the court. *Paris First Nat. Bank v. Yerkes*, (C. C. A. 6th Cir. 1916) 238 Fed. 278, 151 C. C. A. 294.

Time for appeal.—If the appeal is not taken within the time fixed by statute, the right to take it is lost. *In re Stafford*, (D. C. Conn. 1917) 240 Fed. 155.

And when the time for taking an appeal has expired, it cannot be arrested or called back by a simple order of court. *In re Stafford*, (D. C. Conn. 1917) 240 Fed. 155.

In *Barton Lumber, etc., Co. v. Prewitt*, (C. C. A. 8th Cir. 1916) 231 Fed. 919, 146 C. C. A. 115, it was held that because the amount involved was not five hundred dollars, or over, and because the appeal was not taken within ten days after the judgment appealed from was rendered, the appeal was improvidently

allowed, and, on the authority of *Coder v. Arts*, (1909) 213 U. S. 223, 29 S. Ct. 436, 59 U. S. (L. ed.) 772, must be dismissed.

Order confirming composition.—Such an order is governed by this provision and a failure to appeal within the time specified is fatal to the right. *In re Brookstone Mfg. Co.*, (C. C. A. 1st Cir. 1917) 239 Fed. 697, 152 C. C. A. 531.

The granting of a rehearing operates to extend the time of the taking effect of an order and therefore of the time of taking an appeal which is computed from the date the order is finally disposed of. *Todd v. Alden*, (C. C. A. 8th Cir. 1917) 245 Fed. 462, 157 C. C. A. 624.

An order relating to a claim secured by a lien on the assets of the bankrupt is a proceeding in bankruptcy and, as such, an appeal therefrom must be taken within ten days. *In re Monarch Acetylene Co.*, (C. C. A. 2d Cir. 1917) 245 Fed. 741, 153 C. C. A. 143.

Vol. I, p. 833, sec. 25b.

Decision under former section 25b—Appeal to Supreme Court.—A decision of a Circuit Court of Appeals that a claim against a bankrupt estate for damages growing out of the anticipatory breach of an executory contract, while allowable as a provable debt for the term during which that court thought that the contract was mutually obligatory, should not be allowed beyond that period, was not reviewable in the federal Supreme Court under the Bankrupt Act of July 1, 1898 (30 Stat. at L. 553, ch. 541), § 25b-1, as presenting a federal question which would sustain a writ of error to a state court. *Central Trust Co. v. Chicago Auditorium Ass'n*, (1916) 240 U. S. 581, 36 S. Ct. 412, 60 U. S. (L. ed.) 811, L. R. A. 1917B 580.

Vol. I, p. 843, sec. 27a.

A compromise for an amount much less than the value of the property was not approved, where a receiver claimed title to personal property listed in the bankrupt's schedules and the evidence was such as to prima facie throw on the claimant the burden of proving his title which was not satisfactorily done. *In re Stier March Contracting Co.*, (E. D. Pa. 1916) 245 Fed. 223.

Vol. I, p. 844, sec. 29b (1).

Concealment of assets—Elimination of offense.—"To constitute the punishable offense of having knowingly and fraudulently concealed while a bankrupt from his trustee property belonging to his estate in bankruptcy, such concealment must have been by the bankrupt after the filing of a petition against him, while a bankrupt, or after his discharge, and the

property must have been concealed from the trustee, and such property must have belonged to the estate in bankruptcy. The concealment must be knowingly and fraudulently done. The evidence must be clear." *In re Agnew*, (N. D. N. Y. 1915) 225 Fed. 650.

Concealment by corporation.—Officers of a corporation may be prosecuted for concealment of the corporate property. *Wolf v. U. S.*, (C. C. A. 4th Cir. 1916) 238 Fed. 902, 152 C. C. A. 36.

Continuing concealments.—"The construction of continuous concealment has been declared by the courts principally in cases arising on applications for discharge under section 14b of the act. . . . The construction applies with equal force to concealment of property under criminal section 29b. Each section deals with the same thing, though in different ways, and with different objects. The main difference in the provisions is in the proofs required in proceeding under them, and this is the difference that always maintains between proof required in civil and criminal actions." *Glass v. U. S.*, (C. C. A. 3d Cir. 1916) 231 Fed. 65, 145 C. C. A. 253.

Omission to schedule property.—While omission of property, from a schedule may be evidence of a fraudulent intent to conceal, such omission does not in itself constitute concealment of property." *Gretsch v. U. S.*, (C. C. A. 3d Cir. 1916) 231 Fed. 57, 145 C. C. A. 245.

Criminal intent.—See to same effect as original annotation, *In re Lenweaver*, (N. D. N. Y. 1915) 226 Fed. 987.

Jurisdiction.—"Concealment is a positive act committed at some time or other with respect to a physical thing. It must, therefore, be done somewhere, and wherever done in violation of the statute, there and there alone has the court jurisdiction of the offense." *Gretsch v. U. S.*, (C. C. A. 3d Cir. 1916) 231 Fed. 57, 145 C. C. A. 245.

Indictment—In general.—An indictment which, after alleging that defendants expected an involuntary petition in bankruptcy to be filed against one of them and an adjudication and the appointment of trustee in bankruptcy to follow, charges a conspiracy to conceal from such trustee certain property belonging to the expected bankrupt and specifically described, and sets forth overt acts done pursuant to the conspiracy, but does not allege that such owner was a bankrupt at the time of the conspiracy, is sufficient. *Friedman v. U. S.*, (C. C. A. 7th Cir. 1916) 236 Fed. 816, 150 C. C. A. 653.

Evidence.—Where the charge against a bankrupt was that just prior to bankruptcy he had purchased goods on credit, had sold the goods so obtained and had fraudulently concealed the proceeds of

such sale from his trustee in bankruptcy it was held that an objection to conversations with the defendant at the time he sold the merchandise and converted it into cash just prior to the bankruptcy was properly overruled. *Green v. U. S.*, (C. C. A. 2d Cir. 1917) 240 Fed. 949, 153 C. C. A. 635.

Vol. I, p. 849, sec. 29b (2).

False oath.—"The bankrupt is required to answer and give truthful answers so far as he answers at all, and there is an issue sufficient in law for the foundation of a charge of perjury in case the bankrupt willfully and knowingly gives false testimony regarding matters pertinent to the inquiry being made." *U. S. v. Coyle*, (N. D. N. Y. 1916) 229 Fed. 256.

The disposition made by the bankrupt of his property is a pertinent inquiry, when examined either before or after adjudication, and if, when examined on this subject, the bankrupt willfully and knowingly and contrary to his oath testifies falsely regarding such disposition, it must be that a charge of perjury will lie. *U. S. v. Coyle*, (N. D. N. Y. 1916) 229 Fed. 256.

Evidence—Admissibility of judgment roll in another action.—On the trial of a person for making false oaths in a bankruptcy proceeding the admission of a judgment roll in another action to which he was also defendant has been held proper as bearing on his motive and the reason for his testimony in the bankruptcy proceedings. *Hopkins v. U. S.*, (C. C. A. 2d Cir. 1916) 234 Fed. 867, 148 C. C. A. 465.

Indictment—Alleging false testimony.—An indictment alleging that the defendant in answer to the question whether he had since a certain date transferred any money except certain specified sums by answering in the negative made a false and untrue answer in that he had paid a specified sum to his son is not insufficient in failing to show that the attention of the bankrupt was called to the particular payment. *U. S. v. Coyle*, (N. D. N. Y. 1916) 229 Fed. 256.

An indictment charging conspiracy to make a false account of assets and liabilities must allege the commission of an overt act during the period of the conspiracy. *U. S. v. Baker*, (D. C. R. I. 1917) 243 Fed. 746.

Vol. I, p. 851, sec. 29b (4).

Conspiracy.—In the case of a conspiracy to fraudulently receive personal property from the bankrupt in violation of this provision it is not necessary in order to obtain a conviction that the property should be in the actual possession of the bankrupt where the conspiracy was formed

if it appears that it belonged to him or to the estate. *Knoell v. U. S.*, (C. C. A. 3d Cir. 1917) 239 Fed. 16, 152 C. C. A. 66.

Vol. I, p. 895, sec. 31a.

Computation of time by months or years.—To the same effect as the original annotation, see *In re De Lewandowski*, (D. C. Mass. 1917) 243 Fed. 787.

Where the last day falls on Sunday one has until the next day in which to act. *Grafton v. Meikleham*, (C. C. A. 5th Cir. 1917) 246 Fed. 737, 159 C. C. A. 39.

Vol. I, p. 895, sec. 32a.

Transfer for convenience of parties.—The question of the convenience of parties should be determined by the court in the domiciliary jurisdiction. *In re New Era Novelty Co.*, (D. C. N. J. 1916) 241 Fed. 298.

Vol. I, p. 898, sec. 38a.

Jurisdiction.—The duties of the referee do not begin until the case has been referred to him; and his jurisdiction includes only such parts of the bankruptcy jurisdiction of the District Court as are carried by the reference. *In re Weidhorn*, (D. C. Mass. 1917) 243 Fed. 756.

Objection to jurisdiction.—Where objection is reasonably made to the jurisdiction of the referee the subsequent filing of an answer to the merits does not operate as an assent to his jurisdiction. *In re Weidhorn*, (D. C. Mass. 1917) 243 Fed. 756.

Mode of review — General Order No. 27.

—The statute provides for a review by the judge of the orders or findings of the referee, and the order determines how this review may be obtained by the aggrieved party, and what the duties of the referee are pertaining to such. The former directs the referee to act upon request of interested parties, and the latter suggests that he shall act on petition filed, setting out the error complained of. The petition for review is here wanting, and this accounts for the want of a certificate from the referee. The required petition becomes the foundation of authority and cannot be dispensed with in proceedings to review. When filed, the referee is bound to certify; without it there is no authority to review. *In re Avoca Silk Co.*, (M. D. Pa. 1917) 241 Fed. 607.

Time for review.—In the case of *In re Wister*, (E. D. Pa. 1916) 232 Fed. 898, it was declared that under General Order 27 (89 Fed. xi, 32 C. C. A. xxvii), which has all the force of statutory law, no review can be had of an order, except upon petition filed with the referee. Under the rules of this court, such petition must be filed with the referee within 10 days after order, and, without this, a review cannot

be had, except upon allowance by the court after notice and cause shown, etc. See also *In re Isert*, (N. D. Cal. 1915) 232 Fed. 484.

Weight of referee's findings of fact.—The findings of fact of a referee, where there is a conflict of evidence, are entitled to great weight; and they will not be disturbed except where they appear to be clearly erroneous. *In re Biehl*, (E. D. Pa. 1916) 237 Fed. 720; *In re Goldman*, (E. D. Pa. 1917) 241 Fed. 385; *In re Lavery*, (D. C. Mass. 1917) 244 Fed. 959; *In re Atkinson-Kerce Grocery Co.*, (N. D. Ga. 1917) 245 Fed. 481; *In re Fackler*, (N. D. Ohio 1917) 246 Fed. 864. See to same effect, *In re Anderson*, (N. D. Ga. 1915) 224 Fed. 790; *In re Gay*, (D. C. Mass. 1915) 224 Fed. 127; *In re Murphy*, (D. C. Mass. 1915) 225 Fed. 392; *McCulloch v. Davenport Sav. Bank*, (S. D. Ia. 1915) 226 Fed. 309; *Dallam v. Reber*, (C. C. A. 3d Cir. 1916) 229 Fed. 554, 144 C. C. A. 14; *Schmid v. Rosenthal*, (C. C. A. 3d Cir. 1916) 230 Fed. 818, 145 C. C. A. 128; *Aller-Wilmes Jewelry Co. v. Osborn*, (C. C. A. 8th Cir. 1916) 231 Fed. 907, 146 C. C. A. 103; *Walter A. Wood Mowing, etc., Mach. Co. v. Croll*, (C. C. A. 6th Cir. 1916) 231 Fed. 679, 145 C. C. A. 565; *Wilson v. Continental Bldg., etc., Ass'n*, (C. C. A. 9th Cir. 1916) 232 Fed. 824, 147 C. C. A. 18; *In re Ylia*, (N. D. N. Y. 1916) 233 Fed. 476; *In re Aronson*, (N. D. Ala. 1916) 233 Fed. 1022; *Henderson v. Morse*, (C. C. A. 8th Cir. 1916) 235 Fed. 518, 149 C. C. A. 64; *Chambers v. Continental Trust Co.*, (S. D. Ga. 1916) 235 Fed. 441.

The referee in bankruptcy is a judicial officer, performing certain functions as part of the Bankruptcy Court, and there can be no question but that his findings upon all matters within his jurisdiction have the same force and effect as if rendered by any court of general jurisdiction. *McCulloch v. Davenport Sav. Bank*, (S. D. Ia. 1915) 226 Fed. 309.

The court will not disturb the findings of fact of a referee, based upon conflicting evidence involving questions of credibility, unless there is most cogent evidence of mistake and miscarriage of justice. *In re New York, etc., Package Co.*, (D. C. N. J. 1915) 225 Fed. 219.

All presumptions with respect to the want or sufficiency of evidence are in favor of the validity of an order by the referee. *In re Farmers' Dairy Ass'n*, (S. D. Cal. 1916) 234 Fed. 118.

Evidence unreported.—The findings of a referee which do not on the face of the report appear to be erroneous, are said to be final, where the evidence is not reported. *In re Golub*, (D. C. Mass. 1917) 245 Fed. 512.

Weight dependent on character of evidence.—"It is also a general rule that,

if the finding be a deduction from established facts, it will not carry any great weight, for the court, having the same facts, may as well draw inferences or deduce conclusions as the referee." *In re* New York, etc., Package Co., (D. C. N. J. 1915) 225 Fed. 219.

Appeals from interlocutory orders.—The practice of taking appeals from interlocutory orders is one not to be encouraged. It is the exceptional case where good to any one results from the practice. The evil consequences are to bring about conditions of interminable delays, which are insufferable. There is no call upon the court through petitions for review to attempt to regulate the minutes details of the practice before referees. *In re* Graboyes, (E. D. Pa. 1915) 228 Fed. 574.

Discretionary orders.—An order continuing a meeting is largely within the referee's powers as a matter of discretion and will not be disturbed unless the referee has abused his discretion or erred as a matter of law. *In re* Rosenfeld-Goldman Co., (D. C. Mass. 1915) 228 Fed. 921.

Costs.—On review of an order of the referee directing the trustee to make a certain payment where neither litigant has been wholly successful the disbursements will be taxed equally between the trustee and the claimant. *In re* Liberty Doll Co., (S. D. N. Y. 1917) 242 Fed. 695.

Vol. I, p. 902, sec. 38a (2).

A referee appointed a special master to take evidence in and of the court has full power and authority to administer the oath and conduct the examination. *U. S. v. Coyle*, (N. D. N. Y. 1916) 229 Fed. 256.

Vol. I, p. 902, sec. 38a (3).

Ordering surrender of assets.—Although the referee may order the bankrupt to surrender property in his possession to the trustee, jurisdiction to make such an order is not acquired unless the bankrupt has notice of the proceeding and its purpose. *In re* Atwater, (S. D. N. Y. 1915) 227 Fed. 511.

Warrant for seizure of goods.—A referee is held to have authority under this section to issue a warrant for the seizure of goods in the possession of a transferee where the transfer was made within four months prior to the filing of the petition. *Darrough v. Claremore First Nat. Bank*, (Okla. 1916) 156 Pac. 191.

Vol. I, p. 904, sec. 38a (4).

The referee has the specific power to hear and determine all questions arising upon claims filed, and objections thereto. *McCulloch v. Davenport Sav. Bank*, (S. D. Ia. 1915) 226 Fed. 309.

Turning property over to trustee—Practice generally.—In the case of *In re* Nankin, (C. C. A. 2d Cir. 1917) 246 Fed. 811, 159 C. C. A. 113; the bankrupt made a preliminary objection, not made in the court below, viz., that the district judge had no jurisdiction to refer the petition of the trustee to a special commissioner for a report, and then to dispose of it as a court of first instance, instead of upon a petition to review an order made by him as referee and the court said after referring to this section and general order 12: "The proper practice would therefore have been for the trustee to have applied for the turn-over order to the referee, and, after his finding, to review it, if so advised, by filing with him a petition for review by the District Judge, as provided by General Order 27 (89 Fed. xi, 32 C. C. A. xxvii)."

The referee has no jurisdiction in a summary proceeding to require a purchaser in possession of real property from the bankrupt to turn such property over to the trustee. Nor is the power to thus act affected by the fact that because of the small worth of the equity, the trustee can not afford to institute a plenary suit for its recovery. *In re* McCracken, (S. D. Cal. 1916) 234 Fed. 776.

Determination of validity of bonds issued by bankrupt.—In the case of *In re* Valecia Condensed Milk Co., (W. D. Wis. 1916) 233 Fed. 173, it was held that a referee had power to pass on the validity of bonds issued by a bankrupt corporation.

Costs—Authority to tax.—The taxing of costs has been held to be within the discretion of the referee. *In re* Reeves, (N. D. N. Y. 1915) 227 Fed. 711.

Vol. I, p. 909, sec. 38a (5).

Expenses of examination and stenographer.—See *In re* Pearce, (D. C. Mass. 1916) 235 Fed. 917.

Vol. I, p. 910, sec. 39a (3).

Furnishing copies of testimony.—For a case wherein it was held that the bankrupt was entitled to a copy of the transcript of witnesses' testimony, see *In re* Greenbaum, (E. D. Mich. 1917) 243 Fed. 965.

Vol. I, p. 910, sec. 39a (4).

Notice to creditors.—"The mere fact that a creditor denies that he received notice or had knowledge of the bankruptcy proceedings in time to prove his claim, is not conclusive that the statutory notice was not given or that he had no actual knowledge of the pendency of such bankruptcy proceedings, in face of a record of the District Court that such notice was given." *Clafin v. Wolff*, (1915) 88 N. J. L. 308, 96 Atl. 73.

Vol. I, p. 912, sec. 40a.

Referee entitled to commissions on moneys which should have been paid through trustee.—Where creditors who have agreed to a composition under which they are to receive a certain per cent in cash subsequently enter into an agreement by which a less amount in cash and the balance in notes were to be accepted, it has been held that the referee is entitled to a commission as though the amount first agreed on had been deposited with the court. *In re H. Batterman Co.*, (C. C. A. 2d Cir. 1916) 231 Fed. 699, 145 C. C. A. 585.

Commission on moneys expended by the trustee in carrying on the business of the bankrupt will not be allowed to a referee. *In re Bacon*, (W. D. Ky. 1915) 224 Fed. 764.

Commission on rent.—The referee is not entitled to a commission on the amount paid for rent of premises occupied by the trustee in carrying on the business of the bankrupt although it has been held proper to allow a commission on rent paid prior thereto. *In re Bacon*, (W. D. Ky. 1915) 224 Fed. 764; *Kinhead v. Bacon*, (C. C. A. 6th Cir. 1916) 230 Fed. 362, 144 C. C. A. 504.

Compensation proportionate to the difficulties encountered in administering the estate is not authorized by law. *American Surety Co. v. Freed*, (C. C. A. 3d Cir. 1915) 224 Fed. 333, 140 C. C. A. 19.

Extra compensation.—To the same effect as the first paragraph of the original annotation, see *In re Langford*, (S. D. Cal. 1915) 225 Fed. 311.

Statute covers all commissions and disbursements.—"The only authority for the payment of commissions to referees and trustees is found in the bankruptcy law." *American Surety Co. v. Freed* (C. C. A. 3d Cir. 1915) 224 Fed. 333, 140 C. C. A. 19.

Computation—Composition agreement.—In *Kinhead v. Bacon*, (C. C. A. 6th Cir. 1916) 230 Fed. 362, 144 C. C. A. 504, it was said: "We think the meaning of the term 'amount to be paid to creditors,' on which the commission of one half of 1 per cent. is to be computed, means the amount which creditors are to receive by virtue of the composition agreement. The amount offered by the bankrupt and accepted by the creditors became, upon confirmation, 'the amount to be paid creditors.' This construction not only seems logically to result from the consideration to which we have already referred, but receives additional confirmation when consideration is given to the difference between the language 'on all moneys disbursed to creditors by the trustee' (on which the 1 per cent. commission is to be computed in the case of a fully administered estate) and the 'amount to be paid to creditors,' on which one-half of 1 per cent. is to be paid in case of composition—not requir-

ing complete administration." See also *In re White*, (S. D. Ga. 1915) 225 Fed. 796; *In re Mills Tea, etc., Co.*, (D. C. Mass. 1916) 235 Fed. 815.

Review of referee's fees.—Where a motion was made having for its object to secure a revision of the referee's statement of his own fees in a composition case, it was held that the objection should have been raised by review proceedings on the referee's report but that the suggestion having been made to the court that its officer has charged fees on an erroneous basis, the matter ought not, in view of the previous uncertainty as to the proper practice, to be dismissed without examination because informally presented. *In re Mills Tea, etc., Co.*, (D. C. Mass. 1916) 235 Fed. 815.

Vol. I, p. 916, sec. 40b.

Apportionment of commissions.—Where a portion only of the money to be paid under a compromise agreement was deposited owing to a waiver by a part of the creditors, which money was disbursed by the referee to whom the case was transferred, it was said: "As to the apportionment between the referee and his successor: It follows from what we have said that the fact that the successor referee made the disbursement of the moneys actually deposited by the bankrupt did not entitle the successor to the full amount of the commission thereon. We are asked by petitioner to apportion on this review the entire commissions allowed between the two referees. How completely the successor has intended to disclaim the right to participate in further commission, if allowed, is not entirely clear. As we are not considering the case on appeal, but merely upon revision in matters of law, we cannot on this review make or direct such complete apportionment. We assume that the District Judge will determine the apportionment under section 40b of the act, taking into account the proportionate labor and service performed by the two referees in the administration of the estate, in case the successor claims any interest in the further commission." *Kinhead v. Bacon*, (C. C. A. 6th Cir. 1916) 230 Fed. 362, 144 C. C. A. 504.

Vol. I, p. 916, sec. 41a (1).

Contempt dependent on ability to comply with order.—Where the bankrupt is without means in his possession or control to pay over money to the trustee in accordance with an order of the referee the court can not punish by summary imprisonment for contempt even though he may have committed an offense under section 29b of this Act. *In re McNaught*, (D. C. Mass. 1903) 225 Fed. 511.

The law is, well settled that inability to comply with an order requiring the

payment of money, resulting from poverty, insolvency, or other cause not attributable to the fault of the party charged, will under ordinary circumstances be received as a valid excuse from the consequences of contempt. *In re Sobol*, (C. C. A. 2d Cir. 1917) 242 Fed. 487, 155 C. C. A. 263.

Failure to turn over assets.—The failure of the bankrupt to prove that he was unable to make a payment ordered by the referee and his failure to make surrender of such assets is a civil contempt of court, for which an attachment may issue committing him to the penitentiary, to be there imprisoned only unless or until he complies with the order of the Bankruptcy Court. *In re Stanny*, (W. D. N. Y. 1915) 228 Fed. 517.

The fact that a bankrupt has been sentenced for concealing assets and has served out his term is no defense in a proceeding to punish him for contempt with an order to turn over the assets he concealed. *In re Sobol*, (C. C. A. 2d Cir. 1917) 242 Fed. 487, 155 C. C. A. 263.

Vol. I, p. 922, sec. 41a (4).

Contempt by witnesses — Elements of offense.—"It is obvious that a refusal 'to be examined according to law,' means a refusal in fact and effect. The form of the refusal, or in what way manifested, is of no importance. A formal refusal by a witness to answer questions, displayed by a flat and defiant declaration that he would not answer, is one form. Standing mute is another. Evasive, inconclusive, or irresponsible replies to clear and plain inquiries is another. Palpably and flagrantly untruthful answers is still another. There is, it must be observed, in all of these instances, the element of contumaciousness; something of the element of defiance; something which can be distinguished from mere lack of candor or frankness, or from untruthfulness, or even from plain perjury. Refusing to testify is one thing. Testifying falsely is another thing. Although equally reprehensible and open to condemnation, they are distinct and separate, and the distinction should be kept in mind, or confusion will result in visiting upon the offender the deserved punishment. The line of demarcation is distinct enough, but cannot be as readily drawn. This can be best left to the discriminating judgment of the referee before whom the bankrupt appears, and such judgment should not lightly be disturbed." *In re Blitz*, (E. D. Pa. 1916) 232 Fed. 276.

Purging oneself of contempt.—"A commitment for contempt should be preceded with certain formalities. The witness would ordinarily be permitted to purge himself by showing a willingness to recant and to testify fully. He should therefore be first admonished. This should be fol-

lowed with a specific question, and an answer required. The real attitude of the witness will be then disclosed, and any further proceeding be clear cut and definite." *In re Blitz*, (E. D. Pa. 1916) 232 Fed. 276.

Vol. I, p. 923, sec. 41b.

Hearing.—This provision clearly requires a hearing as to the facts, and by necessary implication excludes any inference that in such case the alleged contemnor is to be purged merely by denial upon oath. *In re Boyd*, (E. D. Tenn. 1915) 228 Fed. 1003.

Punishment.—It is settled, in the absence of statutory regulation, that the matter of dealing with contempts and how they should be punished are within the trial court's sound discretion, and that such discretion will not be interfered with, unless it has been grossly abused. *In re Sobol*, (C. C. A. 2d Cir. 1917) 242 Fed. 487, 155 C. C. A. 263.

Vol. I, p. 926, sec. 44a.

Authority of referee.—The conduct of the elections of trustee is part of the administrative work which is left largely with the referees. Their decisions in reference thereto will not be set aside, unless an unjust and injurious abuse of discretion, or a clear mistake of law, is shown. *In re Grat*, (D. C. Mass. 1915) 228 Fed. 925.

"An appointment once made shall not be lightly set aside on appeal. Rights of creditors in the selection of a trustee are important, but the decision as to them ought to rest largely with the referee." *In re Rosenfeld-Goldman Co.*, (D. C. Mass. 1915) 228 Fed. 921.

Appointment by creditors — Prompt action essential.—It is essential to the proper administration of a bankrupt estate that a trustee shall be appointed as promptly as possible. *In re Rosenfeld-Goldman Co.*, (D. C. Mass. 1915) 228 Fed. 921.

Postponing election.—Where the stated time for an election has arrived and a majority in number of the creditors are ready and oppose delay it is the duty of the objecting creditors to be ready or to present a good excuse for not doing so and where no such excuse is offered it is not an abuse of discretion on the part of the referee to refuse to postpone the election. *In re Grat*, (D. C. Mass. 1915) 228 Fed. 925.

Action of a creditor to control the election of a trustee is not objectionable so long as his efforts are directed to the welfare of the entire unsecured creditors. *Bollman v. Tobin*, (C. C. A. 8th Cir. 1917) 239 Fed. 469, 152 C. C. A. 347.

Right of relative of bankrupt to vote for trustees.—There is no reason in law or in morals why a relative of the bankrupt,

who is a legitimate creditor, shall not have the same right to vote for a trustee as any other creditor. *In re Rothleder*, (S. D. N. Y. 1916) 232 Fed. 398. Compare *In re Ballantine*, (N. D. N. Y. 1916) 232 Fed. 271, wherein the court, on an application to review the referee's decision refusing to allow the wife of the bankrupt to vote and rejecting her claim, said that the wife should in no event be permitted to dominate the choice of the trustee.

Right of attorney to vote for trustee.—Attorneys who appear for a creditor and desire to vote for a trustee should have specific written authority, even though the law itself does not expressly require this. *In re Capitol Trading Co.*, (N. D. N. Y. 1916) 229 Fed. 806.

Improper or irregular vote for trustee.—“The election of a trustee will be disapproved where that result has been obtained through the active efforts of the bankrupt, . . . the question is always one of good faith, and the inquiry must be as to whether anything has been done by the bankrupt which will disqualify, or tend to disqualify, a trustee from acting in that impartial and vigorous manner which will assure the proper results for the creditors.” *In re Rothleder*, (S. D. N. Y. 1916) 232 Fed. 398.

Selection in interest of bankrupt.—“If creditors knowingly join with the bankrupt or his attorney, or with an assignee or his attorney, in an effort to do what it has repeatedly been decided they may not do, the simplest and most obvious way to defeat their purpose is to reject their selection of trustee, and permit the creditors who are not in the combination to make the selection.” *In re Stowe*, (N. D. Cal. 1916) 235 Fed. 463.

Creditors' appointment subject to approval.—While the appointment is subject to approval or disapproval by the referee, he can not act arbitrarily, but only for cause. *Wilson v. Continental Bldg., etc.*, Ass'n, (C. C. A. 9th Cir. 1916) 232 Fed. 824, 147 C. C. A. 18, *affirming* (N. D. Cal. 1915) 232 Fed. 413.

Review by judge.—It is said to be a settled practice not to disturb the acts of referees in administrative matters, as for instance the election of a trustee, unless a plain and injurious error of law or abuse of discretion is shown. *In re Rosenfeld-Goldman Co.*, (D. C. Mass. 1915) 228 Fed. 921.

The power of the court as to refusing approval of trustees will not be so exercised as to deprive creditors acting in good faith from controlling the election of trustees. *In re Archbold*, (N. D. Cal. 1916) 237 Fed. 408.

Where the inquiry is whether the referee and the District Court had before them substantial evidence that the relations between the bankrupt and the person appointed as trustee were such as to justify

the referee in disapproving of the appointment or whether the selection was accomplished through the efforts of the officers and attorneys of the bankrupt, if there is substantial evidence upon either of these points, this court will not interfere upon a petition to review. *Wilson v. Continental Bldg., etc.*, Ass'n, (C. C. A. 9th Cir. 1916) 232 Fed. 824, 147 C. C. A. 18, *affirming* (N. D. Cal. 1915) 232 Fed. 413.

Vol. I, p. 931, sec. 45a (1).

Unsuccessful candidate.—Where there is no election of a trustee, owing to a lack of the requisite votes, the referee may select one of the unsuccessful candidates. *In re F., etc., Co.*, (C. C. A. 2d Cir. 1917) 242 Fed. 69, 155 C. C. A. 13, *reversing* (S. D. N. Y. 1916) 237 Fed. 895.

Vol. I, p. 933, sec. 46a.

Ground for removal.—Where the trustee not only failed to carry out the wishes of the creditors by whom he was chosen but placed himself in direct antagonism to them it was held that such conduct justified his removal. *Bollman v. Tobin*, (C. C. A. 8th Cir. 1917) 239 Fed. 469, 152 C. C. A. 347.

Vol. I, p. 934, sec. 47a (2).

Purpose and effect of amendment of 1910.—The amendment of 1910 to this section did not confer new means of collecting ordinary claims due the bankrupt. *Kelley v. Gill*, (1917) 245 U. S. 116, 38 S. Ct. 38, 62 U. S. (L. ed.) 185.

“The effect of this amendment was to give to the trustee, as to all property coming into the custody of the Bankruptcy Court, the rights of a creditor holding a lien.” *In re Fitzhugh Hall Amusement Co.*, (W. D. N. Y. 1915) 228 Fed. 169.

Since 1910 a trustee has two rights as to the property in his custody, that is that of a bankrupt and of a creditor with a lien. These rights are different and sometimes antagonistic in which case the trustee can take his choice. *In re Seward Dredging Co.*, (C. C. A. 2d Cir. 1917) 242 Fed. 225, 155 C. C. A. 65.

Rights of trustee.—“This act has been held to confer upon the trustee the rights which the bankrupt or any of his creditors possessed or might lawfully possess at the time of the filing of the petition.” *Mergenthaler Linotype Co. v. Hull*, (C. C. A. 1st Cir. 1916) 239 Fed. 26, 152 C. C. A. 76.

Trustee has rights, remedies and powers of a judgment creditor holding an execution returned unsatisfied. *Bell v. Shaw*, (C. C. A. 8th Cir. 1916) 230 Fed. 976, 146 C. C. A. 170; *In re Hawley Down-Draft Furnance Co.*, (E. D. Pa. 1916) 233 Fed. 451; *Bunch v. Maloney*, (C. C. A. 8th Cir. 1916) 233 Fed. 967, 147 C. C. A. 641; *In*

re Ricketts, (C. C. A. 7th Cir. 1916) 234 Fed. 285, 148 C. C. A. 187; *In re* Reynolds, (N. D. N. Y. 1917) 243 Fed. 268; *In re* Zeis, (C. C. A. 2d Cir. 1917) 245 Fed. 737, 158 C. C. A. 139.

State law.—As the rights of a creditor "holding a lien by legal or equitable proceedings" are essentially a matter of state law, it follows that the trustee's rights are the same. *In re* Floyd-Scott Co., (D. C. Mass. 1915) 224 Fed. 987.

Status of trustee.—While the Bankruptcy Act imposes upon the trustee the duty of conserving the estate, collecting outstanding claims, and resisting payment of doubtful claims, he stands in a fiduciary capacity, and is to some extent a stakeholder. *In re* Lenters, (E. D. Pa. 1915) 225 Fed. 878.

A trustee appointed in subsequently instituted bankruptcy proceedings does not acquire the status of a creditor holding a lien superior to that of a mortgage executed more than four months before the petition in bankruptcy was filed but recorded within that period. *Martin v. Commercial Nat. Bank*, (C. C. A. 5th Cir. 1916) 228 Fed. 651, 143 C. C. A. 173.

Time as of which trustee takes status of creditor.—The trustee in bankruptcy takes the status of a creditor holding a lien as of the time when the petition in bankruptcy is filed. *Bailey v. Baker Ice Mach. Co.*, (1915) 239 U. S. 268, 36 S. Ct. 50, 60 U. S. (L. ed.) 276. See also *Fairbanks Steam Shovel Co. v. Wills*, (1916) 240 U. S. 642, 36 S. Ct. 466, 60 U. S. (L. ed.) 841.

"Creditor."— "When speaking of a 'creditor' Congress means a creditor of the bankrupt; it is impossible that any trustee could exercise the power or right of any creditor of any person, who (e. g.) might lawfully establish a lien upon property fortuitously coming into the court's custody." *In re* Seward Dredging Co., (C. C. A. 2d Cir. 1917) 242 Fed. 225, 155 C. C. A. 65.

Collection and reduction of assets.— "It is the imperative duty of the trustee of a bankrupt estate to exercise all due diligence to gather in the assets of the estate, and it would seem clear that an examination of the schedule and a following up of all leads naturally suggested thereby would be the first step to be taken. In the absence of some explanation for a failure so to act, the trustee must be charged with negligence and must respond for the consequences thereof." *In re* Kuhn, (C. C. A. 7th Cir. 1916) 234 Fed. 277, 148 C. C. A. 179.

"The trustee cannot be excused from the performance of the duties for which it receives compensation because its beneficiaries, the creditors, have the same avenues of information open to them and fail to take advantage thereof. The creditors may, but are under no duty to, investi-

gate and search for assets, or to suggest to the trustee possible sources of information, which the latter has at least the same opportunity of knowing." *In re* Kuhn, (C. C. A. 7th Cir. 1916) 234 Fed. 277, 148 C. C. A. 179.

Trustees' right to collect assets.—**Right to possession.**—Where it appears by a fair preponderance of the testimony that the bankrupt has assets in his possession which he has not turned over to the trustee a decree may be entered directing the bankrupt to turn it over. *In re* Dixon, (D. C. Mass. 1915) 224 Fed. 624.

Property encumbered by liens.—"When a trustee finds that the bankrupt owns property subject to liens, he should present a petition to the court asking for instructions as to the course which he should pursue." *In re* Cutler, (E. D. N. C. 1916) 228 Fed. 771.

Unrecorded chattel mortgage.—The title of the chattel mortgagee of a bankrupt corporation cannot be perfected as against the trustee in bankruptcy, who asserts the invalidity of the mortgage as against him because not properly acknowledged and recorded, by taking possession of the chattel under the mortgage after the filing of the petition in bankruptcy and before the adjudication. *Fairbanks Steam Shovel Co. v. Wills*, (1916) 240 U. S. 642, 36 S. Ct. 466, 60 U. S. (L. ed.) 841.

Unrecorded conditioned sales.—The adjudication in bankruptcy creates a lien in favor of the trustee upon all property in the custody, or coming into the custody, of the Bankruptcy Court. The status of the general creditors by such act is changed, and by operation of law a lien is created and established in favor of the trustee for the general creditors, and supersedes any rights theretofore existing in favor of a condition sale, a memorandum of which was not recorded pursuant to a state law. *In re* Pacific Electric, etc., Co., (W. D. Wash. 1915) 224 Fed. 220.

"The decisions since the adoption of this statute hold that where the seller of property by conditional sale has failed to record his contract of sale where the state statute renders the contract invalid as to lien creditors or bona fide purchasers without registration, he has no remedy as against the trustee in bankruptcy to enforce the lien, but is a mere general creditor, with a right to share in the assets of the estate." *Hinton v. Williams*, (1915) 170 N. C. 115, 86 S. E. 994.

But where the failure to file a conditional contract of sale does not under a state law make the contract void as to all creditors but only as against subsequent purchasers, pledges and mortgages in good faith, it is valid as to the trustee, he not being clothed with the rights of a subsequent purchaser. *In re* I. S. Remsen Mfg. Co., (E. D. N. Y. 1915) 227 Fed. 207.

A deed of trust or assignment of property subject to mortgages which directs a sale thereof, and, from the proceeds the payment of the mortgages in the order of their priority and the balance to their general creditors were made within four months of the filing of a petition in bankruptcy is avoided by the adjudication and the property passes to the trustee. *In re Cutler*, (E. D. N. C. 1916) 228 Fed. 771.

Unrecorded transfer.—Trustees have the rights and remedies of a lien creditor or a judgment creditor as against an unrecorded transfer. *Fairbanks Steam Shovel Co. v. Wills*, (1916) 240 U. S. 642, 36 S. Ct. 466, 60 U. S. (L. ed.) 841.

Property accidentally in possession of bankrupt.—A creditor holding an unsatisfied judgment can not attack the property of a third person accidentally in the possession of a bankrupt and therefore trustees can not take title to such property. *Brown Bros. Co. v. Smith Bros. Co.*, (E. D. La. 1916) 231 Fed. 475.

Recovery of preferences.—The trustee in bankruptcy has no more extensive and no better title or right in property than did the bankrupt himself, except he may set aside transfers of property made by the bankrupt in fraud of his creditors and recover preferences. *In re Place*, (N. D. N. Y. 1915) 224 Fed. 778.

Recovery of concealed property from bankrupt.—Where it appears that property was in a person's hands, and that fabricated evidence has been given by that person concerning the alleged items of payment or discharge, the natural inference is that falsehood has been resorted to, because no true and correct items of discharge exist; i. e., that the property is still in the possession of the person into whose hands it was traced. *In re Dixon*, (D. C. Mass. 1915) 224 Fed. 624.

"The law is well settled that 'recent' possession of property by the bankrupt, accompanied by a failure to account for it, justifies an inference that the property is still in the bankrupt's possession." *In re Dixon*, (D. C. Mass. 1915) 224 Fed. 624.

Burden of proof.—"While the burden or proof is primarily on the trustee to show that the bankrupt has not accounted for all his assets, yet, when it is established . . . that the bankrupt had possession of the unscheduled assets very recently before the bankruptcy proceedings were instituted, a presumption arises that he still had them when such event took place, and the burden is shifted to the bankrupt to show why they were not scheduled and turned over." *In re Ricciardelli*, (D. C. N. J. 1915) 224 Fed. 638.

Trust funds.—A trustee being vested with all the rights, remedies and powers of a judgment creditor holding an execution duly returned unsatisfied, a motion made by him, within the time allowed by

law for the filing of claims against the bankrupt's estate, for an order directing that an execution issue under section 1391 of the New York Code of Civil Procedure against the income from certain trust funds for the benefit of the bankrupt and directing the testamentary trustee to pay over, etc., will be granted. *Matter of Fokkanzer*, (1917) 101 Misc. 100, 166 N. Y. S. 811.

Liens—Validity.—Under this section the trustee has the right to attack the validity of a lien. *In re Shute*, (W. D. Wash. 1916) 233 Fed. 544.

Prior recorded lien.—A lien created prior to, and recorded within, the four months period is good as against the statutory lien of the trustee given by this section. *In re Brown Wagon Co.*, (S. D. Ga. 1915) 224 Fed. 266.

Void mortgage.—A mortgage by the bankrupt which is void as to a creditor who has fixed a lien on the property in controversy the day the petition in bankruptcy was filed is void as to the trustee. *Park v. South Bend Chilled Plow Co.*, (Tex. Civ. App. 1918) 199 S. W. 843.

Mortgage void as to creditors under state law.—Where under state laws a mortgage, defective both in its execution and recordation, is by reason thereof void as to creditors subsequently dealing with the mortgagor without notice it is held to be void as to the trustee in whom title rests. *Davis v. Harlow*, (1917) 130 Md. 165, 100 Atl. 102. See also as to where mortgage not recorded *In re T. H. Bunch Commission Co.*, (E. D. Ark. 1915) 225 Fed. 243; *In re Cooper's Estate*, (S. D. Ia. 1915) 226 Fed. 317; *In re Kruse*, (N. D. Ia. 1916) 234 Fed. 470; *In re Empress Pharmacy Co.*, (S. D. Ia. 1916) 237 Fed. 676; *In re Rosenthal*, (S. D. Ga. 1916) 238 Fed. 597.

Prior recorded chattel mortgage.—The lien of a chattel mortgage executed prior to and recorded within the four months period is superior to any lien created by this provision in the trustee. *In re Virgin*, (S. D. Ga. 1915) 224 Fed. 128. See also *In re Bolstad*, (W. D. Wash. 1915) 224 Fed. 283.

Landlord's lien.—Where the lien of a landlord is inchoate and covers no special property he is not entitled to priority over the lien given to the trustee under this provision. *Southern R. Co. v. Wilder*, (C. C. A. 5th Cir. 1916) 231 Fed. 933, 146 C. C. A. 129.

Mechanics' lien.—A contractor's trustee in bankruptcy takes his titles subject to liens filed by laborers, mechanics, material men or subcontractors subsequent to the assignment but within the time prescribed by a state statute. *Gates v. John F. Stevens Constr. Co.*, (1917) 220 N. Y. 38, 115 N. E. 22.

"Valid liens created by mortgages made by the bankrupt before the insti-

tution of the bankruptcy proceeding are not subordinated to the rights of his trustee in bankruptcy, which vest as of the date of the filing of the petition in bankruptcy." *Border Nat. Bank v. Coupland*, (C. C. A. 5th Cir. 1917) 240 Fed. 355, 153 C. C. A. 281.

Secret and unrecorded liens.—The amendment of the Bankruptcy Law was not intended to enlarge the rights of a trustee as against lienors under a state statute but to enable the trustee to avoid secret and unrecorded liens created by act of the bankrupt. *Gates v. John F. Stevens Constr. Co.*, (1917) 220 N. Y. 38, 115 N. E. 22.

Vol. I, p. 940, sec. 47a (3).

This provision is mandatory.—*In re Dayton Coal, etc., Co.*, (E. D. Tenn. 1916) 239 Fed. 737.

A bank was not charged with notice that funds belonged to a bankrupt estate merely from the fact that certain of the checks deposited by the trustee were countersigned by the clerk of the court, pursuant to the provisions of rule 29 and section 47 of the Bankruptcy Act. *Fidelity, etc., Co. v. Queens County Trust Co.*, (1916) 174 App. Div. 160, 159 N. Y. S. 954.

Vol. I, p. 942, sec. 47a (11).

Setting apart exemptions.—*Exemption should be set aside promptly.*—One of the first concerns of the trustee should always be promptly to set aside to the bankrupt any exempt property. If the real estate in which the homestead is claimed be indivisible, steps should be taken to have it sold. These things should always be promptly attended to by a trustee, and the referee should see that it is done. *In re Brown*, (W. D. Ky. 1915) 228 Fed. 533.

The trustee can not arbitrarily refuse to set aside property to which the bankrupt is clearly entitled by law; but he represents all of the creditors, and is vested with some discretion. *In re Bonvillain*, (E. D. La. 1916) 232 Fed. 370.

Trustee's action not final.—The bankrupt's exemption when set apart by the trustee is inchoate and not fully fixed in him until approved by the referee in bankruptcy. *In re Anderson*, (N. D. Ga. 1915) 224 Fed. 790.

Exceptions to exemptions.—General Order XVII is mandatory as to the time of filing exceptions to the exemptions set apart and the District Court has no discretion to extend the time. *In re Krecun*, (C. C. A. 7th Cir. 1916) 229 Fed. 711, 144 C. C. A. 121.

Vol. I, p. 947, sec. 48a.

Trustee's compensation.—The courts are controlled by the provisions of this

Act in fixing the referee's compensation. *In re New York Commercial Co.*, (C. C. A. 2d Cir. 1916) 231 Fed. 445, 145 C. C. A. 439.

There is no law authorizing compensation to a referee and a trustee proportionate to the difficulties encountered in administering an estate. *American Surety Co. v. Freed*, (C. C. A. 3d Cir. 1915) 224 Fed. 333, 140 C. C. A. 19.

Congress did not intend by the 1910 amendment to permit trustees to charge a compensation for performing acts outside their duties as such. *C. B. Norton Jewelry Co. v. Hinds*, (C. C. A. 8th Cir. 1917) 245 Fed. 341, 157 C. C. A. 533.

Making sale of mortgaged property.—Commissions and expenses of a trustee in making a sale of mortgaged property have been denied where it was apparent from the first that there would be no balance over the lien for the benefit of the general state. *C. B. Norton Jewelry Co. v. Hinds*, (C. C. A. 8th Cir. 1917) 245 Fed. 341, 157 C. C. A. 533.

Surcharge against trustee's commissions.—A trustee on his accounting will be surcharged against his commissions with the expense of controversies which arise through his fault. *In re Eden Musee American Co.*, (S. D. N. Y. 1916) 230 Fed. 925.

Counsel fees.—Reasonable counsel fees are allowable as a proper expense in connection with a sale by the trustee. *In re West*, (M. D. Pa. 1916) 232 Fed. 903.

The trustee is not entitled to take credit for counsel fees for services unconnected with the sale of property. *Gugel v. New Orleans Nat. Bank*, (C. C. A. 5th Cir. 1917) 239 Fed. 676, 152 C. C. A. 510.

Effect of amendment of 1910.—The amendment of 1910 was intended to furnish an enlarged basis for the computation of the trustee's commissions, but was not intended to affect the source of payment, so as to displace liens in violation of the provisions of section 67d, as amended and re-enacted in 1910. *Gugel v. New Orleans Nat. Bank*, (C. C. A. 5th Cir. 1917) 239 Fed. 676, 152 C. C. A. 510.

Vol. I, p. 950, sec. 48d. [Compensation of receiver and marshals appointed under section 2(3).]

Receiver's fees.—The total compensation to receivers is not to be increased by the fact that there is more than one receiver. *In re Mills Tea, etc., Co.*, (D. C. Mass. 1916) 235 Fed. 813.

A receiver's duties are limited by the powers given him in the order of appointment. He cannot exceed the powers of the appointment, and expect compensation for any activities not authorized. *In re*

Metropolitan Motor Car Co., (W. D. Wash. 1915) 225 Fed. 274.

Where it is necessary for the preservation of the property that a receiver should be appointed to take charge of it before the selection of a trustee it has been held that expenses necessitated by such receivership, including compensation to the receiver should be allowed. *C. B. Norton Jewelry Co. v. Hinds*, (C. C. A. 8th Cir. 1917) 245 Fed. 341, 157 C. C. A. 533.

Orders for allowances to receivers are purely administrative, subject to entire disallowance or change by either increase or decrease with the development of the administration. *Hume v. Myers*, (C. C. A. 4th Cir. 1917) 242 Fed. 827, 155 C. C. A. 415.

Discretion of court.—"The receivers are entitled to a reasonable compensation for the services they have performed. The court which appointed them has the right to determine what that reasonable compensation is. In doing so it must exercise its discretion. But while the matter is left to its discretion, it is not at liberty to fix the allowance at more than a fair and reasonable amount." Appellate courts are not, however, much inclined to interfere with the exercise of this discretionary power. *Eames v. H. B. Claffin Co.*, (C. C. A. 2d Cir. 1916) 231 Fed. 693, 145 C. C. A. 579.

"The compensation specified in the statute is clearly intended not as a fixed, invariable amount to be awarded in all cases, but as a maximum to be allowed only in cases justifying it. As a practical matter, in the great majority of cases the maximum compensation is so small that it is not even fair compensation for the work done; but in each case the question, nevertheless, is how much the services of the receivers were fairly worth." *In re Mills Tea, etc., Co.*, (D. C. Mass. 1916) 235 Fed. 813.

Receiver appointed by state court.—Compensation may be allowed by a Bankruptcy Court to a receiver appointed by a state court for services which were of value to the estate in preserving and collecting it. *State v. Angle*, (C. C. A. 8th Cir. 1916) 236 Fed. 644, 149 C. C. A. 640.

Vol. I, p. 952, sec. 48d. [When acting as mere custodian.]

Mere custodian.—The proviso limiting the compensation of the custodian was meant to cover cases where the services performed are merely those of a keeper. *In re Metropolitan Motor Car Co.*, (W. D. Wash. 1915) 225 Fed. 274.

Vol. I, p. 951, sec. 48e. [On confirmation of composition.]

Effect of confirmation of composition on fees.—See *In re Miller*, (E. D. N. Y. 1917) 243 Fed. 242.

Vol. I, p. 956, sec. 51a (2).

Application.—This section relates only to the statutory fees to be paid to the clerk, referee and trustee as compensation for their services, and has no reference to the expenses incurred by the officers of the court in the bankruptcy proceedings. *In re Crisp*, (E. D. Tenn. 1917) 239 Fed. 419.

Vol. I, p. 960, sec. 55e.

The referee, if in his judgment it is advisable, may call a meeting of the creditors, to the end that they may be heard before action is taken, subjecting the estate to possible cost and expense. *In re Cutler*, (E. D. N. C. 1916) 228 Fed. 771.

Vol. I, p. 960, sec. 56a.

Right of secured creditors to participate in proceedings.—By sections 56a and 57e of the Bankruptcy Act secured creditors are permitted to participate in the bankruptcy proceedings as creditors, but only as creditors for the sum which the court finds to be due them over and above the value of the securities which they hold. *In re Reichard*, (E. D. Pa. 1916) 230 Fed. 525.

Vol. I, p. 962, sec. 56b.

Secured creditors.—After a trustee has been chosen, a secured creditor cannot in respect to its claim vote at creditors' meetings, nor can its claim be counted at such meetings in computing either the number of creditors or the amounts of their claims unless the amounts exceed the value of such securities or priorities, and then only for the excess. *Merchants' Nat. Bank v. Continental Bldg., etc., Ass'n*, (C. C. A. 9th Cir. 1916) 232 Fed. 828, 147 C. C. A. 22.

But while a secured creditor is not entitled to vote at a creditors' meeting the fact that through the fault or inadvertence of the referee or trustee a creditor is permitted to vote at such meeting when his lien has been asserted in his claim as filed is no waiver of the lien. *Horton v. Queens County Machinery Corp.*, (1917) 101 Misc. 31, 166 N. Y. S. 662.

Vol. I, p. 962, sec. 57a.

Necessity and manner of proving claim.—It is essential that a proof of debt in bankruptcy show on its face the true interest of the person presenting it. *In re Collins*, (E. D. La. 1916) 235 Fed. 937.

"It has been uniformly held under the present Bankruptcy Law that the statement of the claim and its consideration must be sufficiently specific and full to enable the trustee and the creditors to make proper investigation as to its fairness and legality, without undue trouble or inconvenience." *In re Hudson Porce*

lain Co., (D. C. N. J. 1915) 225 Fed. 325.

The proof of claim must accord with the statutory requirements before it is accorded any probative force. *In re Hudson Porcelain Co.*, (D. C. N. J. 1915) 225 Fed. 325.

Negative averments.—Where in the sworn proof of claim for breach of a contract there are negative averments, clearly alleged, to the effect that the breach was not brought about by certain causes which would excuse it, it has been held that these allegations are prima facie evidence and in the absence of proof to the contrary sufficient proof of the claim. *Board of Commerce v. Security Trust Co.*, (C. C. A. 6th Cir. 1915) 225 Fed. 454, 140 C. C. A. 486.

Where the proof of a claim for services incorporated a copy of the judgment, which showed all facts necessary to ascertain the true character of the claim, and also made a statement as to the date of the services, it was held that it was sufficient in form to be acted upon and that where neither the trustee nor other creditors seemed to have been misled or hindered by lack of information as to the precise nature of the claim, the referee did not exceed his powers in treating the proof as adequate for the purpose in hand. *In re Haskell*, (D. C. Mass. 1915) 228 Fed. 819.

Effect of failure to prove.—"In the case of a bankrupt corporation, the bankruptcy act does not restrain a creditor, who has not proved his claim in bankruptcy, from prosecuting an action to judgment, for the purpose of enforcing his lien upon the property attached, or of charging officers or stockholders who are liable for the debts of the corporation." *Chickasaw Hotel Co. v. C. B. Barker Constr. Co.*, (1916) 135 Tenn. 305, 186 S. W. 115, L. R. A. 1916F 106.

"When property is sold subject to liens, the lienholder, not having presented his claim and invoked the administration of the full value of the property, cannot afterwards resort to the bankrupt estate, but is relegated to the property as security." *In re Old Oregon Mfg. Co.*, (W. D. Wash. 1916) 236 Fed. 804.

Proof of partnership obligation.—"The better rule, sanctioned by the later cases, is that, when persons who are partners unite in making a note, though they sign their several names, instead of the partnership name, if the note is one given in a partnership transaction and the partnership receives the consideration, it should be proved and allowed as a partnership obligation in bankruptcy." *In re Kendrick*, (D. C. Vt. 1915) 226 Fed. 978.

Amendment of proofs.—See to same effect as original annotation, *Lontos v. Coppard*, (C. C. A. 5th Cir. 1917) 246

Fed. 803, 159 C. C. A. 105; *In re Soltmann*, (S. D. N. Y. 1916) 238 Fed. 241.

After a judgment has been rendered allowing proof of an unsecured claim to be amended the claim stands as if it had been originally filed in the way it had been amended. *Britton v. Thomas*, (C. C. A. 8th Cir. 1916) 238 Fed. 125, 151 C. C. A. 201.

An amendment of proof as one of an unsecured debt has been allowed where there has been no order expunging the claim. *Seligman v. Gray*, (C. C. A. 1st Cir. 1915) 227 Fed. 417, 142 C. C. A. 113.

Amendment to avoid statute of limitations.—A claimant may be allowed to file an amended proof of claim for this purpose. *In re Ballantine*, (N. D. N. Y. 1916) 232 Fed. 271.

Who may prove claims.—A surety or an indorser for the bankrupt, whose liability is contingent, cannot prove a claim of his own by reason of such liability. It is only the creditor's claim which is provable. *In re Astoroga Paper Co.*, (N. D. N. Y. 1916) 234 Fed. 792.

Proof by agent.—The Supreme Court has prescribed the form to be used by an agent, and it provides for a disclosure of the principal. It is not contemplated by the rules that debts be proved by an agent when the principal is present and able to file his own proof. *In re Collins*, (E. D. La. 1916) 235 Fed. 937.

Proof by assignee.—"Assignees of claims have the right, under the provisions of the bankruptcy law, to prove them against the estate just as other claims may be proven." *In re Breakwater Co.*, (E. D. Pa. 1916) 232 Fed. 375.

The assignee of a claim proven and allowed, and upon which dividends have been paid, need not and cannot make proof of the same claim in his own name as the then owner and assignee of such claim. *In re Louis J. Bergdoll Motor Co.*, (E. D. Pa. 1916) 230 Fed. 248.

Father of minor son.—Proofs are properly made by the father for a claim for labor performed by a minor son. *In re Haskell*, (D. C. Mass. 1915) 228 Fed. 819.

Secured creditor.—Under section 57, subsections "a" and "h," of the Bankruptcy Act, as construed by the courts, when the trustee does not elect to redeem by paying the debt, a secured creditor, having the right to sell the security, is not required, in the first instance, to so elect, but he may sell the security and file a claim for the unpaid remainder of his debt. *In re McAusland*, (D. C. N. J. 1916) 235 Fed. 173.

Effect of proving claims.—Proof of a claim does not commit the claimant to a waiver of his unquestioned right to have the affairs of the debtor administered elsewhere than in the Bankruptcy Court.

Tate v. Brinser, (M. D. Pa. 1915) 226 Fed. 878.

Where creditors have only proved a partnership debt they are not entitled on that proof to share in the distribution of a bankrupt member's individual estate. *Adams v. Brown*, (C. C. A. 4th Cir. 1915) 226 Fed. 688, 141 C. C. A. 444.

The allowance of a claim against the estate of one of the members of a firm is not a determination of priorities as between firm and individual creditors. *International Agricultural Corp. v. Cary*, (C. C. A. 6th Cir. 1917) 240 Fed. 101, 153 C. C. A. 137.

Vol. I, p. 967, sec. 57c.

Where the claim reasonably delivered to the referee lacked the statement of the official character of the officer signing the jurat and the referee returned it to the creditor's attorney for correction in that respect and it was not redelivered to the referee for about two years it was held that the proof as originally filed was sufficient to form the foundation for a good proof by perfecting amendments and that the claim should appear on the referee's filing record to have been filed on the date when first presented. *In re Haskell*, (D. C. Mass. 1915) 228 Fed. 819.

Vol. I, p. 967, sec. 57d.

Allowance of claims.—The sworn proof of claim against the bankrupt is *prima facie* evidence of the indebtedness claimed; and the allowance of the claim amounts to an adjudication that his estate was indebted to the creditor, so long as such adjudication is not set aside or reversed. *International Agricultural Corp. v. Cary*, (C. C. A. 6th Cir. 1917) 240 Fed. 101, 153 C. C. A. 137.

Power to allow.—The court can not order an unsecured creditor paid in full to the exclusion of all other unsecured creditors. Thus it was so held where a creditor, the owner of letters patent, had a valid license agreement with the bankrupt to take back upon request any of the patented articles at the net price at which they were furnished and to credit them on account or pay cash therefor and in pursuance of an opportunity given by the court to repurchase the articles, refused to do so except upon condition that its unsecured account against the bankrupt should be paid in full. *L. E. Waterman Co. v. Kline*, (C. C. A. 4th Cir. 1916) 234 Fed. 891, 148 C. C. A. 489.

Effect of allowance.—The allowance of claims against the estate of a bankrupt is a finding as to all parties that the debts did exist and had not been discharged or waived. *Gleason v. Thaw*, (C. C. A. 2d Cir. 1916) 234 Fed. 570, 148 C. C. A. 336.

Vol. I, p. 969, sec. 57e.

Allowance of secured and priority claims.—After a trustee has been chosen a secured creditor cannot in respect to its claim vote at creditors' meetings, nor can its claim be counted at such meetings in computing either the number of creditors or the amounts of their claims unless the amounts exceed the value of such securities or priorities, and then only for the excess. *Merchants' Nat. Bank v. Continental Bldg., etc., Ass'n*, (C. C. A. 9th Cir. 1916) 232 Fed. 828, 147 C. C. A. 22. See also *In re Reichard*, (E. D. Pa. 1916) 230 Fed. 525.

One to whom notes of a bankrupt have been pledged may be allowed to prove for the whole amount of the notes if necessary to cover his claim. *In re Anger Baking Co.*, (C. C. A. 2d Cir. 1915) 228 Fed. 181, 142 C. C. A. 537.

A claimant having a demand against two insolvent estates has a right to prove against each for the full amount, and can assert this right against one unimpaired by the fact that he holds security against the other. He can recover dividends from the two bankrupt estates upon the full amount of his claim at the time the petition in bankruptcy was filed therein until from all sources he receives full payment of his claim, but no longer. *In re New York Commercial Co.*, (C. C. A. 2d Cir. 1916) 233 Fed. 906, 147 C. C. A. 580.

Mortgage bondholders under a corporation mortgage have, under this section, proper standing to petition the court to vacate an order of adjudication, on the ground that the bankrupt did not have his principal place of business, residence, or domicile within the district, but had its principal place of business in another district. *In re San Antonio Land, etc., Co.*, (S. D. N. Y. 1916) 228 Fed. 984.

Vol. I, p. 971, sec. 57f.

Objections by trustee.—Where a trustee has been appointed, objections to claims should be made, and review proceedings, if advisable, be taken by him, or, in case he declines to act, by creditors proceeding in his name by order of the referee. The practice of recognizing individual creditors in such matters, after the appointment and qualification of the trustee, is improper and objectionable. *In re Knox Automobile Co.*, (D. C. Mass. 1915) 229 Fed. 241.

Where the bankrupt and one creditor contested a petition of three creditors on the ground that the petition of one of the creditors was not valid and provable but subsequently, and after a partial hearing, the adjudication was expressly consented to and the order of adjudication was entered, it was held that this adjudication could not estop the trustee acting on behalf of all creditors or any noncontesting

creditors from denying the validity and provability of such claim. *In re Continental Engine Co.*, (C. C. A. 7th Cir. 1916) 234 Fed. 58, 148 C. C. A. 74.

The reduction of an alleged debt to judgment in a state court before bankruptcy does not exempt it from attack by or on behalf of creditors who would be injuriously affected by its allowance, when such allowance is sought in bankruptcy proceedings. *In re Continental Engine Co.*, (C. C. A. 7th Cir. 1916) 234 Fed. 58, 148 C. C. A. 74.

Vol. I, p. 972, sec. 57g.

Surrender essential.—A creditor who has received a preference which is voidable must surrender the same before his claim will be allowed. *In re French*, (N. D. N. Y. 1916) 231 Fed. 255.

So where it appears that a creditor has received a preference within the four months prior to bankruptcy proceedings the referee has power to order the claim disallowed unless the claimant surrender such preference to the trustee in accordance with the provisions of this section. *McCulloch v. Davenport Sav. Bank*, (S. D. Ia. 1915) 226 Fed. 309.

A preferred creditor may prove his claim under this section, notwithstanding there has been no surrender of his preference by him beyond what is involved in the payment of a final judgment secured against him in a proceeding instituted by the trustee to avoid the preference. *In re Louis J. Bergdoll Motor Co.*, (E. D. Pa. 1916) 230 Fed. 248.

A right asserted by a mortgagee under a chattel mortgage to the proceeds of the sale of the mortgaged property is not such a claim as, under this section, will be disallowed until the surrender of an illegal preference obtained. Even were it considered as an ordinary claim, not arising out of an entirely separate transaction, the greater weight of authority is against its disallowance. *In re Johnson*, (W. D. Wash. 1915) 224 Fed. 180.

Compulsory surrender.—The fact that a claimant has retained a voidable preference, until he has been compelled to surrender the same by legal proceedings, does not affect the provability or allowance of his debt after such surrender has been made. *In re Louis J. Bergdoll Motor Co.*, (C. C. A. 3d Cir. 1916) 233 Fed. 410, 147 C. C. A. 346.

So a creditor may prove his claim as a general creditor after compliance with a decree directing him to return a voidable preference. *State Bank v. Ingram*, (C. C. A. 8th Cir. 1916) 237 Fed. 76, 150 C. C. A. 278.

Vol. I, p. 976, sec. 57h.

The word "litigation," as used in this section, is a comprehensive term, meaning any appropriate action or proceeding in

the courts to ascertain the value of the security, wherein the secured creditor and trustee may each be heard, and includes foreclosure proceedings. *In re Soltmann*, (S. D. N. Y. 1916) 238 Fed. 241.

Right generally of secured creditor.—Under section 57, subsections "a" and "h," of the Bankruptcy Act, as construed by the courts, when the trustee does not elect to redeem by paying the debt, a secured creditor, having the right to sell the security is not required in the first instance to so elect, but he may sell the security and file a claim for the unpaid remainder of his debt. *In re McAusland*, (D. C. N. J. 1916) 235 Fed. 173.

Allowance for balance only.—A creditor who has realized on collateral can only prove for the amount of the debt after deduction of the amount received for the collateral. *In re Bash*, (E. D. Pa. 1917) 245 Fed. 808.

When the creditor lawfully converts the securities into money, the amount realized should determine the amount to be charged against the face of the claim. *In re Isaacs*, (C. C. A. 2d Cir. 1917) 246 Fed. 820, 159 C. C. A. 122.

The fact that a trustee knew of and acquiesced in a foreclosure suit has been held not to vary the original agreement between the mortgagor and mortgagee and, if construed as an agreement as to method of liquidation, to be without validity for lack of the court's direction as provided in this section. *In re Soltmann*, (S. D. N. Y. 1916) 238 Fed. 241.

Burden of proof.—Where the proof of claims shows that claimant on a sale of the property mortgaged as security for its debt bought in the property, the burden is on it to show that such property was of insufficient value to pay its debt. *In re McAusland*, (D. C. N. J. 1916) 235 Fed. 173.

Vol. I, p. 978, sec. 57i.

Proof by surety.—In ordinary instances, no question of waiver of rights intervening, subsection "i" of section 57 is conclusive of the authority of a surety to prove the claim of the creditor whose debt be paid. *Kilpatrick v. U. S. Fidelity, etc., Co.*, (C. C. A. 5th Cir. 1916) 228 Fed. 587, 143 C. C. A. 109.

Where a surety has paid the amount of its obligation into court which sum has been divided among the creditors, it is entitled to subrogation and steps into the creditors' shoes with the right to prove its claim and a claimant who has received such a dividend must credit the sum so received and confine itself to the balance. *In re American Product Co.*, (C. C. A. 3d Cir. 1915) 224 Fed. 401, 140 C. C. A. 87.

Subrogation of indorser.—Upon payment of a note by the indorsers they become subrogated to the petition of the

creditor. *In re Griffith Stillings Press*, (D. C. Mass. 1917) 244 Fed. 316.

Vol. I, p. 980, sec. 57k.

Reconsideration of allowed claim.—Under this section and General Order XXI, a claim which has been allowed may be reconsidered and rejected on the petition of a creditor. *In re Collins*, (E. D. La. 1916) 234 Fed. 937.

Under this provision it is competent for the referee, proper notice being given to all persons in interest, to reconsider his action in allowing a claim and to realow it or deal with it according to the equities of the case. *Cary v. International Agricultural Corp.*, (N. D. Ohio 1916) 243 Fed. 475; *International Agricultural Corp. v. Cary*, (C. C. A. 6th Cir. 1917) 240 Fed. 101, 153 C. C. A. 137.

Vol. I, p. 982, sec. 57n.

Construction and application.—This section has reference only to the proving of claims against the bankrupt's estate. It does not apply to an offer of composition. *In re Atlantic Constr. Co.*, (S. D. N. Y. 1915) 228 Fed. 571. See also *In re Aarons*, (D. C. N. J. 1917) 243 Fed. 634; *In re Breakwater Co.*, (E. D. Pa. 1916) 232 Fed. 375.

Time for proving claims—One year limitation.—Claims must be proved within one year after the date of adjudication. *In re Trion Mfg. Co.*, (N. D. Ga. 1915) 224 Fed. 521. And the period prescribed by this section is not enlarged or stated anew by the discovery of unscheduled assets. *Chapman v. Whitsett*, (C. C. A. 8th Cir. 1916) 236 Fed. 873, 150 C. C. A. 135.

The limitation prescribed by this section is, with some exceptions, definite and conclusive. *Chapman v. Whitsett*, (C. C. A. 8th Cir. 1916) 236 Fed. 873, 150 C. C. A. 135.

It was not intended to apply to any claim against the estate for something arising after the proceedings were instituted as part of the cost of administration as for instance a claim for rental of the premises occupied by the trustee. *In re Green*, (E. D. Pa. 1916) 231 Fed. 253.

Time of proving claims "liquidated by litigation"—The phrase "liquidated by litigation."—A preferred creditor is not barred by the one year statute of limitation, but his claim is within the protection of the proviso in section 57n as a claim "liquidated by litigation." *In re Louis J. Bergdoll Motor Co.*, (E. D. Pa. 1916) 230 Fed. 248.

A proceeding to recover a preference is within the phrase "liquidation by litigation." *In re Louis J. Bergdoll Motor Co.*, (C. C. A. 3d Cir. 1916) 233 Fed. 410, 147 C. C. A. 346.

Amendment after one year period.—Much liberality has been shown by the courts in permitting imperfect claims and proofs of claim to be put into proper form after the statutory period has expired, but there seems to be no decision that runs counter to the positive language of the Act and permits a claim that is wholly new to be presented after the limitation has run. In some form the substance of a claim must have been made within the proper time, but if this has been done amendments may be made afterward. *In re Thompson*, (C. C. A. 3d Cir. 1915) 227 Fed. 981, 142 C. C. A. 439.

In the case of *In re Amsdell-Kirschner Brewing Co.*, (N. D. N. Y. 1917) 243 Fed. 783, the court denied an application to amend after the expiration of the one year period on the ground that it would be a waste of time to allow the amendment to the claim, and expend time and money in taking proofs in regard thereto, as the trustee in bankruptcy contested the same most strenuously.

Vol. I, p. 987, sec. 58a (5).

Effect of notice.—An order of the Bankruptcy Court declaring a dividend and adjudicating the claim of a bank to priority in a fund collected from insurance companies on policies held by the bank as collateral has been held to be binding upon indorsers who were parties to the settlement with the insurance companies and who had notice of the intention to declare the dividend, and consented to the payment of the policies to the trustee while parties to the bankruptcy proceedings, although they voluntarily withdrew their claim in the bankruptcy proceeding prior to the declaration of the dividend. *American Sav. Bank, etc., Co. v. Munson*, (1916) 93 Wash. 78, 159 Pac. 1195.

Where a claim has been properly disallowed the claimant has no standing to object to a dividend order made without giving the required ten days' notice. *In re Leslie, etc., Co.*, (D. C. Mass. 1916) 230 Fed. 465.

Vol. I, p. 987, sec. 58a (8).

Sections 58a (8) and 59g when read together relate only to dismissals upon application of a party in interest, and do not apply to the dismissal of a voluntary petition, upon the initiation of the court, and for the protection of its officers from the continuance of merely futile proceedings, on account of the bankrupt's own failure to take the preliminary steps necessary to bring the creditors before the court. *In re Crisp*, (E. D. Tenn. 1917) 239 Fed. 419.

Vol. I, p. 988, sec. 59a.

A voluntary petition for adjudication of a corporation as a bankrupt may be filed

by authority of the board of directors. *In re S., etc., Mfg., etc., Co.*, (N. D. Ohio 1917) 246 Fed. 1005; *In re Hargadine-McKittrick Dry Goods Co.*, (E. D. Mo. 1917) 239 Fed. 155; *In re United Grocery Co.*, (S. D. Fla. 1917) 239 Fed. 1016; *Rudebeck v. Sanderson*, (C. C. A. 9th Cir. 1915) 227 Fed. 575, 152 C. C. A. 207.

In the case of a voluntary petition authorized by the directors of a corporation it is the duty of objecting stockholders to move against it promptly if at all. *Rudebeck v. Sanderson*, (C. C. A. 9th Cir. 1915) 227 Fed. 575, 142 C. C. A. 207.

"The solvency vel non of the corporation is not material in a voluntary petition." *In re United Grocery Co.*, (S. D. Fla. 1917) 239 Fed. 1016.

Effect of previous involuntary petition.—See to same effect as original annotations, *International Silver Co. v. New York Jewelry Co.*, (C. C. A. 6th Cir. 1916) 233 Fed. 945, 147 C. C. A. 619. See also *In re Continental Coal Corp.*, (C. C. A. 6th Cir. 1916) 238 Fed. 113, 151 C. C. A. 189.

Averments of petition.—Where an adjudication is desired of the petitioning partners as individuals as well as the firm, there should at least be inserted in the prayer of the petition a request for an adjudication of the petitioning partners as well as of the firm. *In re Lenoir*, (E. D. Tenn. 1915) 226 Fed. 227.

Where the averments of the petition clearly show commercial insolvency the court has authority under this section to act on the petition as soon as it is filed and to make the adjudication. *In re Southern Arizona Smelting Co.*, (C. C. A. 9th Cir. 1916) 231 Fed. 87, 145 C. C. A. 275.

Right of creditors to contest.—While creditors may contest any petition in involuntary bankruptcy, no provision is made for contesting a petition in voluntary bankruptcy. *In re Pennington*, (W. D. Ky. 1915) 228 Fed. 388.

Vol. I, p. 990, sec. 59b.

I. Who may file petition in involuntary bankruptcy.

II. Form, averments, and amendment of petition.

I. WHO MAY FILE PETITION IN INVOLUNTARY BANKRUPTCY (p. 990)

Creditors having provable claims.—

Where one of several joint makers of a note failed and refused to pay his share and the others paid it in full and then filed an involuntary petition in bankruptcy against the one refusing to pay it was held that the petitioners were creditors having "provable claims" against the alleged bankrupt within the meaning of Bankruptcy Act. *Wright v.*

Rumph, (C. C. A. 5th Cir. 1917) 238 Fed. 138, 151 C. C. A. 214.

Time when petitioner must be creditor.—Petitioning creditor must have provable claim when the petition is filed. *In re Van Horn*, (C. C. A. 3d Cir. 1917) 246 Fed. 822, 159 C. C. A. 124.

Before the petition, creditors may buy claims, and the bankrupt may induce creditors not to join in the petition; but to sustain the petition the requisite petitioners must be those who are creditors when the petition is filed. *In re Kehoe*, (C. C. A. 2d Cir. 1916) 233 Fed. 415, 147 C. C. A. 351.

Disqualification of creditors as petitioners—Generally.—In the case of *In re Burg*, (N. D. Tex. 1917) 245 Fed. 173, the list filed by defendant showing his creditors at the date of the filing of the petition disclosed 24, not including the plaintiff. Only 3 of them were for more than \$100, the highest being for \$252.56, and 12 of them were for sums under \$5. These small claims were current accounts for groceries, drugs, dry goods, milk, gas and oil, telegrams, telephone bills, water, light and gas bills, etc., such as are contracted and paid for from month to month. The court said: "Such creditors are practically secured, as their bills have to be paid from month to month before further necessities can be obtained. The Bankruptcy Law is never invoked by any such small creditors, who themselves have adequate remedy for the collection of their accounts by cutting off further supplies. As to these accounts, I think the maxim, 'De minimis non curat lex,' applies."

Disqualification by participation in general assignment.—A creditor who has assented to an assignment by his debtor may not ordinarily thereafter file an involuntary petition in bankruptcy against him, based solely upon such assignment. *In re Campe*, (N. D. Cal. 1917) 240 Fed. 433.

II. FORM, AVERMENTS AND AMENDMENT OF PETITION (p. 994)

Averment of commission of act of bankruptcy.—The words "because of insolvency" in the allegation of a petition have been construed as meaning insolvency as defined by the Bankruptcy Act, § 1a (15). *In re Valentine Bohl Co.*, (C. C. A. 2d Cir. 1915) 224 Fed. 685, 140 C. C. A. 225.

General averments as to acts of bankruptcy are not sufficient. *In re Mason-Seaman Transp. Co.*, (S. D. N. Y. 1916) 235 Fed. 974.

But the jurisdictional averments that the defendant is "insolvent" in the sense in which the term is used in the statute, and "within four months next preceding the filing of this petition" the defendant, "while insolvent," committed the respective acts of bankruptcy as alleged, and "that, being insolvent, it did apply for

a receiver for its property," have been held sufficient to give the court jurisdiction. *Graham Mfg. Co. v. Davy-Poehontas Coal Co.*, (C. C. A. 4th Cir. 1916) 238 Fed. 488, 151 C. C. A. 424.

And an allegation that a confession of judgment was made with intent to prefer has been held sufficient though it does not set forth the facts and circumstances from which such intent may be inferred. "It would be quite impracticable to set out all the facts and circumstances upon which a party may rely to show intent, especially where, . . . it is necessary to show actual rather than constructive intent." *In re Musgrove Min. Co.*, (D. C. Idaho 1916) 234 Fed. 99.

Amendment of fatal defects.—It has been decided that the court has no power to allow an amendment to a petition setting up a new, separate, and independent act of bankruptcy which occurred more than 4 months before the application to insert it in the petition. But even if the court has power to allow amendments of this character, it certainly ought not to do so, except upon a showing that the petitioner was duly diligent and that the interests of justice require such action. *In re Forbes*, (D. C. Mass. 1916) 235 Fed. 316.

Amendment of allegation as to act of bankruptcy.—The averments as to acts of bankruptcy may be amended. *In re Irish*, (E. D. Pa. 1915) 228 Fed. 573.

Amendment to avoid preference.—Although there has been an adjudication on a voluntary petition filed over four months after an alleged preferential transfer a petition in involuntary proceedings, commenced within the four months' period, may be amended where it alleges a preferential transfer in the language of the statute, omitting only the information necessary to enable the bankrupt to meet the charge, if necessary to protect rights which would be lost under the adjudication of the voluntary petition alone. *International Silver Co. v. New York Jewelry Co.*, (C. C. A. 6th Cir. 1916) 233 Fed. 945, 147 C. C. A. 619.

Vol. I, p. 999, sec. 59c.

Notice to creditors unnecessary.—Notice to creditors of the filing of a petition is unnecessary. *Coppard v. Gardner*, (Tex. Civ. App. 1918) 199 S. W. 650.

Vol. I, p. 1000, sec. 59d.

Notice required.—This section requires notification to "such creditors," meaning, those creditors named in the list filed with the answer, and hence necessarily the creditors who were such when the petition was filed. *In re Kehoe*, (C. C. A. 2d Cir. 1916) 233 Fed. 415, 147 C. C. A. 351.

Vol. I, p. 1001, sec. 59f.

Jurisdiction.—The court which is charged with the duty of collecting and distributing a bankrupt estate alone has jurisdiction to authorize other creditors to intervene as parties. *Babbitt v. Read*, (C. C. A. 2d Cir. 1917) 240 Fed. 694, 153 C. C. A. 492.

Opposing petition—Involuntary proceedings.—When one having an interest in preventing or vacating an adjudication of bankruptcy on an involuntary petition seeks leave to appear and plead to the petition, and discloses as the occasion of his proposed participation in the proceedings an alleged unwarranted substitution by the debtor of an admission of the petitioner's allegation of insolvency in the place of his previously made denial of that allegation, the first question to be determined is whether the proposed defense was duly presented prior to the adjudication so made. The application calls for the exercise by the court of a sound discretion in determining, in the first place, whether the leave sought should be granted or refused. *Abbott v. Wauchula Mfg., etc., Co.*, (C. C. A. 5th Cir. 1916) 229 Fed. 677, 144 C. C. A. 87.

A motion to dismiss the petition being in the nature of a demurrer, the facts set forth therein, which clearly present the questions involved, will be considered as true. *Graham Mfg. Co. v. Davy-Poehontas Coal Co.*, (C. C. A. 4th Cir. 1916) 238 Fed. 488, 151 C. C. A. 424.

Effect of intervention.—Where a person has, on his own motion, obtained an order allowing him to intervene in a bankruptcy proceeding he thereby submits himself to the jurisdiction of the court and must remain there so as concerns any attack by him on the court's orders. *In re Ohio Copper Min. Co.*, (S. D. N. Y. 1917) 241 Fed. 711.

A single intervening creditor has the right to carry on a petition good on its face. *In re Culin-Pace Contracting Co.*, (D. C. Mass. 1915) 224 Fed. 245.

Withdrawal from petition.—"It is not within the power of a creditor who joins in good faith in a petition to have his debtor adjudged a bankrupt thereafter to withdraw from such petition, and prevent the matter from proceeding, so long as any of the petitioning creditors insist that the matter do proceed. It is doubtful whether such petitioning creditor may withdraw in any event without leave of court so to do. Any other rule would leave the door open for the perpetration of fraud, and the surreptitious bargaining between the debtor and petitioning creditors in an effort to procure the withdrawal of a sufficient number of the latter to reduce the amount of claims or the number of creditors below the requirements of the statute. The court cannot

inquire into the good faith of every attempted withdrawal, nor indeed is there any way to prove the secret bargainings between debtor and creditors, and the only way to prevent them is to hold such attempted withdrawals to be ineffectual so long as any of the petitioning creditors desire in good faith to prosecute their petition to an adjudication." *In re San Jose Baking Co.*, (M. D. Cal. 1916) 232 Fed. 200.

Vol I, p. 1003, sec. 59g.

Sections 58a (8) and 59g when read together relate only to dismissals upon application of a party in interest, and do not apply to the dismissal of a voluntary petition, upon the initiation of the court, and for the protection of its officers from the continuance of merely futile proceedings, on account of the bankrupt's own failure to take the preliminary steps necessary to bring the creditors before the court. *In re Crisp*, (E. D. Tenn. 1917) 239 Fed. 419.

Notice to creditors.—Where there is neither an application by the petitioner for the dismissal, nor the consent of any of the parties, and the application is opposed by the petitioning creditor, it has been held that notice of the application served upon the petitioning creditors who have appeared in the proceeding is sufficient and that it need not be served on all the creditors of the alleged bankrupt. *In re Mason-Seaman Transp. Co.*, (S. D. N. Y. 1916) 235 Fed. 974.

Vol. I, p. 1004, sec. 60a.

- I. Creation of preferences.
- II. Constituent elements.

I. CREATION OF PREFERENCES (p. 1005)

Preference created by judgment.—A preference is created where a debtor suffers and procures a judgment to be obtained and entered against it. *Grant v. National Bank*, (N. D. N. Y. 1916) 232 Fed. 201.

"Transfer" defined.—The word "transfer" is given a broad meaning by the statutory definition. A money payment is within this generality of definition. *Golden Hill Distilling Co. v. Logue*, (C. C. A. 6th Cir. 1917) 243 Fed. 342, 156 C. C. A. 122.

Preference created by transfer.—See to same effect as original annotation, *Wolfe v. Anderson Bank*, (C. C. A. 4th Cir. 1916) 238 Fed. 343, 151 C. C. A. 359; *Grandison v. National Bank*, (C. C. A. 2d Cir. 1916) 231 Fed. 800, 145 C. C. A. 620.

A security transferred for future advances, in the absence of fraud or collusion, does not constitute a voidable preference. *Dunlap v. Seattle Nat. Bank*, (1916) 93 Wash. 568, 161 Pac. 364.

A transfer to a third person may be a preference where done with intent to evade the statute. *Grandison v. National Bank*, (C. C. A. 2d Cir. 1916) 231 Fed. 800, 145 C. C. A. 620; *McKnight v. Shadbolt*, (1917) 98 Wash. 665, 168 Pac. 473.

Insolvent partners of an insolvent partnership cannot rightfully devote the whole of their separate estates to the benefit of a single firm creditor, under the guise of treating him as their private creditor, and so ignore their joint and several liability to all the firm creditors. To do this operates to create a preference. *Ft. Pitt Coal, etc., Co. v. Diser*, (C. C. A. 6th Cir. 1917) 239 Fed. 443, 152 C. C. A. 321.

Preferences created by attachment.—The provision of the Bankruptcy Act making void the preference gained by an attachment does not preclude the sheriff from asserting his superior right to have his fees paid upon the discharge of the levy. *Gotham Nat. Bank v. Hickox*, (1917) 100 Misc. 372, 166 N. Y. S. 644.

Preference created by mortgage.—A mortgage operates as a preference when it is executed within the four months' period, and its effect is to enable one creditor to obtain a greater percentage of his debt than is obtained by other creditors of the same class. *In re Hawkins*, (N. D. Ga. 1917) 243 Fed. 792.

Preference created by payment.—*Payment of rent.*—Where a tenant within the four months prior to his bankruptcy paid money to his landlord, who, instead of applying it to current rent, applied it to the payment of back rent upon which he would have had only the right of an ordinary creditor, it was held that such application was a preference. *In re Louis J. Bergdoll Motor Co.*, (E. D. Pa. 1915) 225 Fed. 87.

Dividends paid by an assignee under a general assignment for the benefit of creditors do not come within the Bankruptcy Act's definition of preferences. *In re Vorck*, (D. C. Mont. 1916) 235 Fed. 655.

Money acquired after petition filed.—Bankrupts may properly pay a creditor money earned by them after petition filed or obtained from relatives and friends. *Cohen v. Bacharach*, (C. C. A. 2d Cir. 1916) 229 Fed. 385, 143 C. C. A. 505.

Money deposited in pursuance of contract to pay all lienable claims.—A contract between a railway company, a construction company, and the latter's sureties, which, after reciting the controversy as to whether the construction contract had been performed, the filing of claims for liens and attachment suits for more than the sum admitted by the railway company to be due, and the latter company's assertion of its right against the surety companies, fixed a sum to be paid by the railway company in full settlement of the mutual claims between it and the construction company, which sum, with an additional amount to be furnished by

the surety companies, should be put into the hands of named trustees "to be used in paying all lienable claims" growing out of the construction contract, created an equitable lien in favor of all alleged liens which the parties should deem to have color of right, and the fund having thus been appropriated and set aside more than four months before bankruptcy proceedings against the construction company were begun, a preference was not created by the formal ascertainment of, and payment to, a specific beneficiary within the four months period. *Johnson v. Root Mfg. Co.*, (1915) 241 U. S. 160, 36 S. Ct. 520, 60 U. S. (L. ed.) 934.

Banking transactions—In general.—A bank which is a creditor of a bankrupt, who has in the usual course of business a sum of money on deposit to his credit at the date of bankruptcy, is entitled to apply the same on its claim as a set-off, and such action does not create a preference. *Wichita Fourth Nat. Bank v. Smith*, (C. C. A. 8th Cir. 1916) 240 Fed. 19, 153 C. C. A. 55.

If an insolvent, within four months antecedent to bankruptcy, should make deposits or give checks to a bank to enable it to secure a preference, the transaction would be inimical to the Bankruptcy Law, and would be held void as a preference. But when an insolvent customer makes a deposit with his bank, in good faith and in the usual course of business, at any time within four months before the petition in bankruptcy is filed against him, the bank is allowed to credit the amount on notes of the bankrupt held by it. *American Bank, etc., Co. v. Coppard*, (C. C. A. 4th Cir. 1915) 227 Fed. 597, 142 C. C. A. 229.

Preferential payments to banks.—Where it appeared that deposits which accumulated in a bank were paid over to it by the officers of the bankrupt company, there was held to be a preference, it clearly appearing that the money was received by the bank, when its officers had every reason to know that a preference would result and that the bank would get more on its general claim against the bankrupt than other creditors of the same class. *In re Fairburn Oil, etc., Co.*; (N. D. Ga. 1917) 240 Fed. 835.

II. CONSTITUENT ELEMENTS (p. 1014)

In general.—A transfer by an insolvent person, to constitute a voidable preference under this section as amended, must be on account of a pre-existing debt. *In re Mosher*, (N. D. N. Y. 1915) 224 Fed. 739.

Before adjudication bankrupts are at liberty to deal with their property as they see fit, so long as they do not give a preference to any creditor or impair the value of their estate. *O'Connell v. Worcester*, (1916) 225 Mass. 159, 114 N. E. 201.

In construing the meaning of the words "will be" in this section it has been declared that by the very language of section 60b the payment must operate as a preference at the time it is made, or not at all, and the belief of the creditor as to whether it will constitute a preference or not must be of the time the payment is made. *Peck v. Whitmer*, (C. C. A. 8th Cir. 1916) 231 Fed. 893, 146 C. C. A. 89.

Insolvency.—In a proceeding to determine whether a transfer of a debtor is a preferential one, the state rule of insolvency is the one to be followed. *Simpson v. Western Hardware, etc., Co.*, (1917) 97 Wash. 626, 167 Pac. 113.

Intention to give a preference is not material since the amendment of 1910. *Golden Hill Distilling Co. v. Logue*, (C. C. A. 6th Cir. 1917) 243 Fed. 342, 156 C. C. A. 122.

Time of obtaining preference.—*The effect and object of the amendment* was to extend the time within which the conveyance or assignment or preference could be assailed, and the property conveyed or assigned subjected as assets for the benefit of all the creditors alike, thereby avoiding the preference. It did not make void or voidable any mortgage, conveyance, assignment, or preference which would not otherwise have been voidable had it been made within the four months of the filing of the petition of bankruptcy; but it did have the effect to make the date from which the four months should be reckoned start from the recording or filing for registration, rather than from the date of execution, though whether the transaction in question was void or voidable must be ascertained from the facts and circumstances existing at the date of execution, rather than from those obtaining at the date of the filing for record. *Gray, etc., Hardware Co. v. Guthrie*, (Ala. 1917) 75 So. 318.

In calculating the four months the preferential character of a transfer of property is to be determined as of the date of the filing of the petition. *Rubenstein v. Lottow*, (1916) 223 Mass. 227, 111 N. E. 973.

Where recording required.—Where registration and record of a deed was required and this was not done until within the prohibited four months' period, it is therefore voidable as to the excess over a homestead right. *Sieg v. Greene*, (C. C. A. 8th Cir. 1915) 225 Fed. 955, 141 C. C. A. 79, Ann. Cas. 1917C 1006.

A chattel mortgage is invalid against lien creditors and the trustee until acknowledged and where this Act essential to validity is not performed until within the four months' period, the mortgage operates as a preference. *In re Caslon Press*, (C. C. A. 7th Cir. 1915) 229 Fed. 133, 143 C. C. A. 409.

Instrument valid under state law.—The recording of a conveyance by an insolvent

is not "required" by law, within the meaning of the provisions of the Bankrupt Act, §§ 60a and 60b, where, under the applicable local law, the failure to record a deed does not render it invalid as to the grantor's creditors, but only as to subsequent bona fide purchasers without notice. *Carey v. Donohue*, (1915) 240 U. S. 430, 36 S. Ct. 386, 60 U. S. (L. ed.) 726, L. R. A. 1917A 295. See also *Johnson v. Barrett*, (N. D. Ga. 1916) 237 Fed. 112.

Where by the state law a deed is good between the parties and against all the world, except subsequent purchasers in good faith, and for a valuable consideration from the same vendor, whose conveyance is first recorded, a trustee in bankruptcy not being such a purchaser and not representing any such person, the conveyance is not by law required to be recorded against him. *Marsh v. Leseman*, (C. C. A. 2d Cir. 1917) 242 Fed. 484, 155 C. C. A. 260.

Necessity of diminishing estate.—Where a person agreed to loan money to a corporation on condition that she receive a mortgage for a like sum on designated property, and delivered a check for the amount on like condition, it was held that a return of the money in a few days on her demand, because of a failure to give the mortgage, did not constitute a preference, as the money remained her money, and no rights of creditors had attached. *Wallerstein v. Gallagher*, (E. D. Pa. 1916) 236 Fed. 602.

Where securities were loaned to a firm of brokers, the lender retaining title, for the purpose of hypothecation to aid the firm in financial difficulties, a return of the securities to the lender was held not to constitute a preference. *Robinson v. Roe*, (C. C. A. 2d Cir. 1916) 233 Fed. 936, 147 C. C. A. 610.

Transfer for present consideration.—This section does not apply where the bankrupt receives a present consideration for the transfer. *Lake View State Bank v. Jones*, (C. C. A. 7th Cir. 1917) 242 Fed. 821, 155 C. C. A. 409; *In re Sutherland Co.*, (D. C. Mass. 1917) 245 Fed. 863; *O'Connell v. Worcester*, (1916) 225 Mass. 159, 114 N. E. 201.

Where property is transferred by a bankrupt, part of the consideration for such transfer being a pre-existing debt, and the other part a present payment of money, such transfer will be held void, except to the extent that a present consideration was paid therefor. *Payne v. Sehon*, (W. Va. 1917) 94 S. E. 34.

A chattel mortgage is not a preference where given at the same time a loan is made to the mortgagor. *In re Metropolitan Dairy Co.*, (C. C. A. 2d Cir. 1915) 224 Fed. 444, 140 C. C. A. 646.

Renewal of fire policies.—Where the fire insurance policy on a stock of goods was made payable to the seller and some of

the policies were renewed within the four months' period, and loss thereunder was paid to the seller within that period, there was held to be no preference. *Sullivan v. Myer*, (1917) 137 Tenn. 412, 193 S. W. 124.

The formal assignment of a policy of fire insurance has been held not to constitute a preference where the policy was actually pledged and the assignment actually made more than four months before bankruptcy. *Hecker v. Commercial State Bank*, (1916) 35 N. D. 12, 159 N. W. 97.

Vol. I, p. 1026, sec. 60b.

- I. Elements of voidability.
- II. Recovery of voidable preferences.

I. ELEMENTS OF VOIDABILITY (p. 1026)

In general—"A trustee in bankruptcy is entitled under the Bankruptcy Act to recover a transfer of property if the following circumstances concur: (1) That a 'transfer' of the property of the debtor has taken place. (2) That the debtor at the time of the 'transfer' was insolvent. (3) That the transfer was made within four months before the filing of the petition in bankruptcy, or after the filing and before the adjudication. (4) The transfer must enable the creditor to obtain a greater percentage of his debt than other creditors of the same class. (5) The person receiving it must have had reasonable cause to believe that the enforcement of the transfer would effect a preference." *Grandison v. National Bank of Commerce*, (C. C. A. 2d Cir. 1916) 231 Fed. 800, 145 C. C. A. 620. See also *Hogar v. Watt*, (M. D. Pa. 1915) 232 Fed. 373; *Abele v. Beacon Trust Co.*, (1917) 228 Mass. 438, 117 N. E. 833; *Putnam v. United States Trust Co.*, (1916) 223 Mass. 199, 111 N. E. 969.

This section as amended in 1910, authorizes the trustee to avoid a preferential transfer only when the person receiving the transfer or to be benefited thereby, or his agent acting therein, "shall then have reasonable cause to believe that the enforcement of such transfer would effect preference, it shall be voidable by the trustee," etc. *In re Terrell*, (C. C. A. 8th Cir. 1917) 246 Fed. 743, 159 C. C. A. 45.

An act on the part of the bankrupt whereby he surrenders or encumbers his property or some part of it for the benefit of a particular creditor, and thereby diminishes the estate, is what is meant by the provisions of this section. *Bailey v. Baker Ice Machine Co.*, (1917) 239 U. S. 268, 36 S. Ct. 50, 60 U. S. (L. ed.) 275.

The word "required" in this section refers directly to statutes in many states relating to recording which through various forms of expression seek to protect

creditors by providing that their rights shall be superior to transfers while off the record. Recognizing the beneficial results of these enactments and intending that rights based thereon might be utilized for the advantage of bankrupt estates, Congress inserted (amendment of 1910) the clause "or of the recording or registering of the transfer if by law recording or registering thereof is required." Purchasers are not of those in whose favor registration is "required," but the reference is to persons concerned in the distribution of the estate, i. e., "creditors, including those whose position the trustees was entitled to take." It properly follows that before a trustee may avoid a transfer because of the provision in question he must in fact represent or be entitled to take the place of some creditor whose claim actually stood in a superior position to the challenged transfer while unrecorded and within the specified period. *Martin v. Commercial Nat. Bank*, (1917) 245 U. S. 513, 38 S. Ct. 176, 62 U. S. (L. ed. 201, affirming (C. C. A. 5th Cir. 1916) 228 Fed. 651, 141 C. C. A. 85. See also *Hawkins v. Dannenberg Co.*, (S. D. Ga. 1916) 234 Fed. 752.

The insolvency must exist at the time of the transfer, and the transfer must then operate as a preference and the creditor must then have reasonable cause to believe that the enforcement of the transfer would effect a preference. *Peck v. Whitmer*, (C. C. A. 8th Cir. 1916) 231 Fed. 893, 146 C. C. A. 89.

Distinction between remedies under section 60b and 67e.—"The provisions of sections 60b and 67e, disclose a wide difference as to what is required to show liability. To establish a liability under the former section no actual fraud need be shown. The section merely condemns a transfer by bankrupt within four months for the purpose of creating a preference, providing the party receiving the transfer has reasonable cause to believe that a preference was intended. The legal remedy is entirely adequate, and no relief is offered in equity that the law does not afford. To establish a liability under section 67e actual fraud must be shown, and suits under that provision are peculiarly within the cognizance of and should be entertained by the equity court." *Simpson v. Western Hardware, etc., Co.*, (W. D. Wash. 1915) 227 Fed. 304.

"The exercise of a pre-existing right, lawful in the local jurisdiction, although occurring within the prescribed period, is not an illegal preference, unless made with intent to hinder or defraud creditors." *MacDonald v. Aetna Indemnity Co.*, (1916) 90 Conn. 415, 97 Atl. 332.

It cannot be ruled as matter of law that there has been a preference, but it must be determined as a fact. *Putnam v. United*

States Trust Co., (1916) 223 Mass. 199, 111 N. E. 969.

Reasonable cause to believe transaction would effect preference.—The amendment of 1910 does not dispense with the necessity of proving reasonable cause to believe that such transfer would effect a preference. *Maysville First Bank v. Alexander*, (Okla. 1915) 153 Pac. 646.

A suit cannot be maintained under this section unless the defendant knew or had reasonable cause to believe that a preference would result from the payments the trustee seeks to recover. *Grandison v. National Bank of Commerce*, (C. C. A. 2d Cir. 1916) 231 Fed. 785, 145 C. C. A. 620.

The creditor who receives a partial payment on his debt, so far as the question of his having reasonable cause to believe that the enforcement of the payment would effect a preference is concerned, has the right to look at the bankrupt's estate at the time the payment is made. Bankruptcy may never occur, but if it does, the creditor may not be charged with a knowledge of what an estate will pay out after it has undergone the shrinking process of the courts. *Peck v. Whitmer*, (C. C. A. 8th Cir. 1916) 231 Fed. 893, 146 C. C. A. 89.

Reasonable cause to believe that payments would effect a preference has been held to be established where in connection with other evidence it appeared that the sale of the property and distribution of the proceeds was in pursuance of a plan to pay the local creditors, regardless of nonresident creditors. *D. C. Wise Coal Co. v. Small*, (C. C. A. 8th Cir. 1916) 225 Fed. 524, 140 C. C. A. 508.

"The creditor, or his agent acting in the matter, must have had such information at the time as gave him reasonable cause to believe that the taking of the transfer would, as to then existing creditors, if the transfer were later enforced, enable such creditor to obtain a greater percentage of his debt than any other of such creditors of the same class." *In re Gaylord*, (N. D. N. Y. 1915) 225 Fed. 234.

"Reasonable cause to believe" is usually inferred from such facts as from inability to pay bills in the usual course of business as they mature, from poor business, and from transactions of a character not ordinarily resorted to by solvent traders. *In re Sutherland Co.*, (D. C. Mass. 1917) 245 Fed. 663.

"Where in any particular case it is shown that a creditor at the time he receives full payment of his debt knows that his debtor is insolvent or has knowledge of such facts, which investigated would show insolvency, it necessarily results that the creditor had reasonable cause to believe that the enforcement of the transfer would effect a preference." *Peck v. Whitmer*, (C. C. A. 8th Cir. 1916) 231 Fed. 893, 146 C. C. A. 89.

Question of fact.—Whether a person had such cause is a question of fact to be determined from all the circumstances attending the transaction and the relations existing between the parties thereto. *Marshall v. Nevins*, (C. C. A. 9th Cir. 1917) 242 Fed. 476, 155 C. C. A. 252; *Stephen Putney Shoe Co. v. Dashiell*, (C. C. A. 4th Cir. 1917) 246 Fed. 121, 158 C. C. A. 121; *Putnam v. United States Const. Co.*, (1916) 223 Mass. 199, 111 N. E. 696; *MacDonald v. Aetna Indemnity Co.*, (1916) 90 Conn. 415, 97 Atl. 332.

Each case is dependent on its own circumstances. *Healy v. Wehrung*, (C. C. A. 9th Cir. 1916) 229 Fed. 686, 144 C. C. A. 96; *Clifford v. Morrill*, (D. C. Mass. 1916) 230 Fed. 190; *Peninsula Bank v. Wolcott*, (C. C. A. 4th Cir. 1916) 232 Fed. 68, 146 C. C. A. 260, Ann. Cas. 1918C 477; *Grant v. National Bank*, (N. D. N. Y. 1916) 232 Fed. 201; *Paris First Nat. Bank v. Yerkes*, (C. C. A. 6th Cir. 1916) 238 Fed. 278, 151 C. C. A. 294; *In re Sutherland Co.*, (D. C. Mass. 1917) 245 Fed. 663.

Presumption.—"The pledgee, taking possession in pursuance of and in the enforcement of his pre-existing right, is prima facie presumed to take in the belief in his right, and not in the belief that his taking is with intent to give himself a preference." *MacDonald v. Aetna Indemnity Co.*, (1916) 90 Conn. 415, 97 Atl. 332.

The proof must show the insolvency of the debtor as defined by subdivision 15 of section 1. *In re Walker Starter Co.*, (C. C. A. 7th Cir. 1916) 235 Fed. 285, 148 C. C. A. 645.

Positive knowledge unnecessary.—Knowledge of sufficient facts and circumstances to put a prudent man upon inquiry is all that is required. *Grandison v. National Bank of Commerce*, (C. C. A. 2d Cir. 1916) 231 Fed. 800, 145 C. C. A. 620; *Maysville First Bank v. Alexander*, (Okla. 1915) 153 Pac. 646; *Jacobs v. Saperstein*, (1916) 225 Mass. 300, 114 N. E. 360, see also *Walter v. National Fire Ins. Co.*, (1917) 101 Neb. 639, 164 N. W. 569.

The knowledge which a creditor has that his payment is out of funds which (if liquidation were had) would be needed equally by other creditors brings him within the language of the statute. *Scheuer v. Katsoff*, (E. D. N. Y. 1916) 233 Fed. 473.

In the case of a transfer of accounts by a bankrupt to a bank within four months of the filing of the petition under such circumstances as naturally would have caused an ordinary person, had he been the creditor receiving the preference, to have believed that thereby a preference would be effected, it has been declared that property received under such circumstances constitutes a voidable preference and the trustee can recover for the benefit

of the bankrupt estate. *Aronin v. Security Bank*, (C. C. A. 2d Cir. 1915) 228 Fed. 888, 143 C. C. A. 286.

Duty of inquiry.—"When put on inquiry and there is a failure to inquire, it may be presumed that inquiry would have disclosed the truth, all the facts; but when put on inquiry, and due inquiry is made and the truth is either wholly suppressed or so colored and explained that the creditor taking the security does not, in fact, have the information which would give reasonable cause to believe, knowledge cannot be imputed to him and he held to have had reasonable cause to believe." *In re Gaylord*, (N. D. N. Y. 1915) 225 Fed. 234.

A preference is not necessarily actually fraudulent, and it is not necessary to prove that the creditor taking the security actually knew the insolvent condition of his debtor giving it, or that he actually believed the security and its enforcement would work or operate as a preference. The existence of facts which came to the creditor's knowledge, or as to which facts he had such information as put him on inquiry in taking the security, or transfer, may establish reasonable cause to believe. *In re Gaylord*, (N. D. N. Y. 1915) 225 Fed. 234; *In re States Printing Co.*, (C. C. A. 7th Cir. 1917) 238 Fed. 775, 151 C. C. A. 625. See also *Jacobs v. Saperstein*, (1916) 225 Mass. 300, 114 N. E. 360; *Walter v. National Fire Ins. Co.*, (1917) 101 Neb. 639, 164 N. W. 569.

The question of knowledge ordinarily is one of fact dependent on the evidence in each case, and no rule can be formulated by which all cases can be mathematically adjusted. *Jacobs v. Saperstein*, (1916) 225 Mass. 300, 114 N. E. 360.

Reason to suspect insufficient.—Mere suspicion is not sufficient to charge creditors with knowledge of, or reasonable cause to believe, the debtor is insolvent. There must be evidence of facts sufficient to put a reasonably prudent person upon inquiry, which, if pursued, would show that the debtor is insolvent and that a preference will be the result. *Nichols v. Elken*, (C. C. A. 8th Cir. 1915) 225 Fed. 689, 140 C. C. A. 563; *Brookheim v. Greenbaum*, (S. D. N. Y. 1912) 228 Fed. 114, 142 C. C. A. 520; *Putnam v. U. S. Trust Co.*, (1916) 223 Mass. 199, 111 N. E. 969; *Rubenstein v. Lottow*, (1916) 223 Mass. 227, 111 N. E. 973; *Dunlap v. Seattle Nat. Bank*, (1916) 93 Wash. 568, 161 Pac. 364.

Knowledge presumed.—*In the case of a mortgage given to cover the whole of a stock of goods it has been declared that the giving and receiving of such a mortgage is an act entirely out of the ordinary course of business and is almost conclusive evidence of the intent of the mortgagor to give and of the mortgagee to receive a preference over other creditors, and therefore of an intent on the part of the mortgagor*

to hinder and delay the creditors other than the mortgagee, the receiving of such a mortgage gives to the mortgagee reasonable cause to believe the mortgagor insolvent. *Schneider v. Bosley*, (S. D. 1917) 165 N. W. 1.

A mortgagee is bound to draw such inference as would naturally follow from the facts coming to his attention; and, where those facts would ordinarily excite suspicion as to solvency and cause inquiry, he is to be held to such knowledge as a reasonable inquiry would have furnished. *In re Sutherland Co.*, (D. C. Mass. 1917) 245 Fed. 663.

Where the purchaser and assignee of a chattel mortgage knew or ought to have known that it was voidable because of its preferential character and he obtained possession of the mortgaged property and, through foreclosure proceedings, converted it to his own use, it has been declared that, upon the plainest principles of law, he became liable for its value when the mortgage was set aside. The fact that he was not the creditor for whose immediate benefit the preference was primarily given does not forbid a decree against him. *Feilbach Co. v. Russell*, (C. C. A. 6th Cir. 1916) 233 Fed. 412, 147 C. C. A. 348.

Where there is no room to doubt that a wife knew of, and, indeed, participated in, a series of nearly simultaneous transactions by which her husband was divesting himself of practically all his property for the payment of part of his debts, and that she knew he was leaving a large part unpaid and unsecured, it was said to follow that the preferential payment was voidable as against her and the money could have been recovered from her, if it had remained in her hands; and it followed, also, that any attempt by her to put it beyond the reach of a possible action by a possible trustee was voidable, as being in hindrance and defeat of that portion of the Bankruptcy Law which contemplated that the trustee should recover such preferences. *Watson v. Adams*, (C. C. A. 6th Cir. 1917) 242 Fed. 441, 155 C. C. A. 217.

Whether or not the debt secured by a lien is a pre-existing one must be determined as of its date of the creation of the lien. *In re Mossler Co.*, (C. C. A. 7th Cir. 1917) 239 Fed. 262, 152 C. C. A. 250.

Intent to prefer.—The intent of the debtor is not of any consequence. *In re Gaylord*, (N. D. N. Y. 1915) 225 Fed. 234.

It is not necessary for the trustee to show that the bankrupt intended a preference or that the creditor believed that such preference was intended. *Abele v. Beacon Trust Co.*, (1917) 228 Mass. 438, 117 N. E. 833.

In order to create a preference, such as will be held void under this act, no showing of fraud is at all necessary, such

a preference consisting in a person while insolvent, and within four months of his bankruptcy, procuring or suffering judgment to be entered against himself, or making a transfer of his property, the effect of which will be to enable one creditor to obtain a greater percentage of his debt than any other creditor of the same class. *Payne v. Schon*, (W. Va. 1917) 94 S. E. 34.

Facts of case as controlling.—Under the facts of the particular case there was held to be a preferential transfer in each of the following cases. *In re French*, (N. D. N. Y. 1916) 231 Fed. 255 (chattel mortgages and assignment); *Rosenthal v. Bronx Nat. Bank*, (C. C. A. 2d Cir. 1916) 231 Fed. 691, 145 C. C. A. 577 (chattel mortgages); *In re Alden*, (D. C. Me. 1916) 233 Fed. 160 (mortgage); *Feilbach Co. v. Russell*, (C. C. A. 6th Cir. 1916) 233 Fed. 412, 147 C. C. A. 348 (chattel mortgage); *Scheuer v. Katsoff*, (E. D. N. Y. 1916) 233 Fed. 473 (payments); *Security Trust, etc., Bank v. Wm. R. Staats Co.*, (C. C. A. 9th Cir. 1916) 233 Fed. 514, 147 C. C. A. 400 (mortgage).

II. RECOVERY OF VOIDABLE PREFERENCES (p. 1038)

In General.—Where it is shown that all the elements of a voidable preference, as defined by this section, exist there may be a recovery by the trustee. *State Bank v. Ingram*, (C. C. A. 8th Cir. 1916) 237 Fed. 76, 150 C. C. A. 278.

"A long line of decisions has determined that the relief sought, if granted, under section 60, extends only to an avoidance of the preference secured by the lender himself as a creditor, or as the practical agent of one who is a creditor." *Johnstone v. Babb*, (C. C. A. 4th Cir. 1917) 240 Fed. 668, 153 C. C. A. 466.

A suit to recover property claimed to have been received as a voidable preference is not a part of the "proceedings in bankruptcy" but is a controversy either at law or in equity between the trustee and a third party. *McCulloch v. Davenport Sav. Bank*, (S. D. Ia. 1915) 226 Fed. 309.

A contract of conditional sale which was not recorded until after the conditional purchasers had become insolvent has been held not to operate as a preferential transfer by them, within the meaning of the bankrupt Act of this section. *Bailey v. Baker Ice Machine Co.*, (1915) 239 U. S. 268, 36 S. Ct. 50, 60 U. S. (L. ed.) 275.

Preference created by judgment.—A creditor who recovers a judgment, by consent or in invitum, and by execution sale collects his money within four months preceding bankruptcy, and with reasonable cause to believe, etc., receives a voidable preference, which he must repay to the trustee. *Golden Hill Distilling Co. v.*

Logue, (C. C. A. 6th Cir. 1917) 243 Fed. 342, 156 C. C. A. 122.

Improvements made on property transferred.—Where a transferee immediately after taking possession of property transferred within the four months period made large expenditures in improvements it was held that any property thus added was no part of the estate in bankruptcy. *Sieg v. Greene*, (C. C. A. 8th Cir. 1915) 225 Fed. 955, 141 C. C. A. 79.

Pleadings.—A petition is defective where it omits any statement that the recipients of a conveyance were chargeable with notice that a preference would result. *Watson v. Adams*, (C. C. A. 6th Cir. 1917) 242 Fed. 441, 155 C. C. A. 217.

A trustee must allege and prove all the statutory elements of a preference before he can recover from the defendant. *Anderson v. Stayton State Bank*, (1916) 82 Ore. 857, 159 Pac. 1033.

In a suit to recover property claimed to have been received as a voidable preference no allegation or proof of a demand and refusal is necessary. *McCulloch v. Davenport Sav. Bank*, (S. D. Ida. 1915) 226 Fed. 309.

Evidence.—*The burden of proof is on the trustee to show that the creditor had reasonable ground to believe that the transfer of the security would effect a preference.* *Dunlap v. Seattle Nat. Bank*, (1916) 93 Wash. 568, 161 Pac. 364. See also *In re Hull*, (N. D. Ohio 1915) 224 Fed. 796; *Clifford v. Morrill*, (D. C. Mass. 1916) 230 Fed. 190; *Marshall v. Nevins*, (C. C. A. 9th Cir. 1917) 242 Fed. 476, 155 C. C. A. 252; *Brown v. Weimar First State Bank*, (Tex. Civ. App. 1918) 199 S. W. 895; *Simpson v. Western Hardware, etc., Co.*, (1917) 97 Wash. 626, 167 Pac. 113.

The burden of proof rests on the trustee to show knowledge. *Watson v. Adams*, (C. C. A. 6th Cir. 1917) 242 Fed. 441, 155 C. C. A. 217.

The burden of proof is on the trustee alleging the invalidity or voidability of the transfer. *In re Gaylord*, (N. D. N. Y. 1915) 225 Fed. 234. See also *Rosenman v. Coppard*, (C. C. A. 5th Cir. 1916) 228 Fed. 114, 142 C. C. A. 520; *Peck v. Whitmer*, (C. C. A. 8th Cir. 1916) 231 Fed. 893, 146 C. C. A. 89; *Frederick v. People's Bank*, (C. C. A. 3d Cir. 1917) 246 Fed. 84, 158 C. C. A. 310; *Putnam v. U. S. Trust Co.*, (1916) 223 Mass. 199, 111 N. E. 969.

Property transferred by a conveyance which operates as a preference can be recovered from any one who is not a purchaser in good faith and for value, and the burden rests upon the person claiming to be such purchaser to show that he paid value. *Watson v. Adams*, (C. C. A. 6th Cir. 1917) 242 Fed. 441, 155 C. C. A. 217.

In order to establish that a mortgage was a preference it is necessary for the trustee to prove that the mortgage was given while the mortgagor was insolvent, that the effect of the enforcement of such mortgage would enable the mortgagee to obtain a greater percentage of its debt than other creditors of the same class, and that the mortgagee had reasonable cause to believe that it was intended thereby to give a preference. *In re Walker Starter Co.*, (C. C. A. 7th Cir. 1916) 235 Fed. 285, 148 C. C. A. 645.

It is not sufficient to defeat the allowance of creditor's claims that they received preferences as defined by law, but it also must appear that at the time the payments were made they had reasonable cause to believe that the enforcement of the payment or transfer would effect a preference. Therefore the burden of proof is upon the trustee to show by a fair preponderance of the evidence (1) that the bankrupt was insolvent at the time the several payments were made; (2) that the payments so made enabled appellants to receive a larger percentage of their respective debts than any other creditor of the same class; (3) that at the time each particular payment was made appellants had reasonable cause to believe that the enforcement of the payment or transfer would effect a preference. *Peck v. Whitmer*, (C. C. A. 8th Cir. 1916) 231 Fed. 893, 146 C. C. A. 89.

Suit under this section controversy in bankruptcy proceedings.—A suit brought under this section by a trustee in bankruptcy to set aside a conveyance on the ground that it was made with a view to giving a preference in violation of the Bankruptcy Act is a controversy arising in bankruptcy proceedings and the decree therein is final, under the Act of Congress of January 28, 1915, 38 Stat. L. 804, and the only right of review by the Supreme Court is by a writ of certiorari. *Staats Co. v. Security Trust, etc., Bank*, (1917) 243 U. S. 121, 37 S. Ct. 336, 61 U. S. (L. ed.) 632.

Hearing on appeal.—The finding of the referee as to whether there has been a preference will not, especially when confirmed by the lower court, be reversed on appeal. *Ullman v. Coppard*, (C. C. A. 5th Cir. 1917) 246 Fed. 124, 158 C. C. A. 350; *Stephen Putney Shoe Co. v. Dashiell*, (C. C. A. 4th Cir. 1917) 246 Fed. 121, 158 C. C. A. 347.

Where the referee found as a conclusion of fact that the appellee bank had no knowledge or reasonable cause to believe that the debtor company was insolvent when, within four months prior to its bankruptcy, it transferred to the bank a certain note to apply upon or as security for a pre-existing debt, it was held that in the absence of a preponderance of opposing proof such as to warrant a

reversal the decree appealed from would be affirmed. *Owens v. Farmer's Bank*, (C. C. A. 4th Cir. 1915) 228 Fed. 508, 143 C. C. A. 90.

Vol. I, p. 1045, sec. 60d.

A petition for re-examination is a condition precedent to any determination by the referee that any portion of the amount paid to an attorney, as specified in the section, may be recovered by the trustee for the benefit of the estate as an excess over and above what is reasonable. *In re Union Dredging Co.*, (D. C. Del. 1915) 225 Fed. 188.

Vol. I, p. 1048, sec. 61a.

Deposit of funds in special hearing interest savings accounts.—Under the provisions of this section and section 47a (3) the placing of funds by the trustee in banks in special interest bearing savings account instead of depositing them in a general checking account is unauthorized. *In re Dayton Coal, etc., Co.*, (E. D. Tenn. 1916) 239 Fed. 737.

Vol. I, p. 1048, sec. 62a.

Necessary expenses allowed—Expense for rent.—If the premises are needed and used by the trustee for carrying on the business or other administration purposes, their rent, or, at least, their rental value, forms an expense of administration. *Louisville Woolen Mills v. Tapp*, (C. C. A. 6th Cir. 1917) 239 Fed. 463, 152 C. C. A. 341. See also *In re Mullings Clothing Co.*, (D. C. Conn. 1916) 230 Fed. 681.

Attorney fees.—In a case in which compensation is sought by attorneys for services rendered by them in the commencement and prosecution of the preference suit in the name of the trustee and with his consent, and the services so performed have resulted in bringing a fund into the court, which is the only source of dividends open to the general creditors of the bankrupt estate, it has been held that they are entitled to an allowance for such services and also expenses out of the fund. *In re Stearns Salt, etc., Co.*, (C. C. A. 6th Cir. 1915) 225 Fed. 1, 140 C. C. A. 461.

Fees of trustee's attorney.—"As a general rule an allowance should not be made to a trustee in bankruptcy for compensation for an attorney employed by him for doing such things for the protection and benefit of the estate as do not require professional skill but are well within the ability of a person possessing ordinary intelligence and business capacity." *In re Union Dredging Co.*, (D. C. Del. 1915) 225 Fed. 188.

An assignee or trustee who has in good faith protected and preserved property to the benefit of the estate of a bankrupt

under an assignment or trust deed valid while he was acting under it is entitled to payment of his legitimate expenses and to compensation for his services and for the services of his attorney out of the proceeds of the property he has preserved which subsequently comes to the trustee in bankruptcy. *Bramble v. Brett*, (C. C. A. 8th Cir. 1916) 230 Fed. 385, 144 C. C. A. 527.

Fees of attorney for receiver.—Fees should be allowed only for services beneficial to the estate. *In re Williams*, (N. D. Ohio 1917) 240 Fed. 788.

Vol. I, p. 1055, sec. 63a (1).

The date of filing the petition marks the line between claims which are provable and those which are not. *Board of Commerce v. Security Trust Co.*, (C. C. A. 6th Cir. 1915) 225 Fed. 454, 140 C. C. A. 486; *In re Leslie, etc., Co.*, (D. C. Mass. 1916) 230 Fed. 465; *In re Mullings Clothing Co.*, (D. C. Conn. 1916) 230 Fed. 681; *In re Henry*, (S. D. N. Y. 1916) 238 Fed. 639.

The liability of a building and loan association to stockholders for amounts paid in and proportions of profits, if any, is fixed, notwithstanding the fact that it may require examination of books to ascertain the exact amount due to each shareholder, and a claim therefor is provable. *Merchants' Nat. Bank v. Continental Bldg., etc., Ass'n*, (C. C. A. 9th Cir. 1916) 232 Fed. 828, 147 C. C. A. 22.

Judgments.—The Bankruptcy Act expressly makes it unimportant whether or not the liability is payable at the end of the filing of the petition. If the debt was then a fixed liability in the form of a judgment the right to file the claim existed. A judgment is primarily absolutely owing when rendered and entered. If it has been paid before the petition in bankruptcy against the judgment debtor has been filed, or if some agreement of satisfaction has been had, or, perhaps, if the judgment is of a kind where it is very uncertain whether an actual duty to pay has arisen, in such cases the judgment would not be absolutely owing. *More v. Douglas*, (C. C. A. 9th Cir. 1916) 230 Fed. 399, 144 C. C. A. 541, *affirming* (S. D. Cal. 1915) 225 Fed. 683.

A debt founded on a judgment obtained in an action in which it was claimed that the bankrupt had obtained property by false and fraudulent representations is provable. *In re Lockwood*, (E. D. N. Y. 1917) 240 Fed. 158.

Where a judgment in a state court has not been paid, or has not been superseded on appeal by a bond given pursuant to the state law, the judgment debtor cannot avoid the effect of levy and execution, and it is a provable debt. *Moore v. Douglas*, (C. C. A. 9th Cir. 1916) 230

Fed. 899; 144 C. C. A. 541, *affirming* (S. D. Cal. 1915) 225 Fed. 683.

The reduction of an alleged debt to judgment in a state court before bankruptcy does not exempt it from attack by or on behalf of creditors who would be injuriously affected by its allowance, when such allowance is sought in bankruptcy proceedings. *In re Continental Engine Co.*, (C. C. A. 7th Cir. 1916) 234 Fed. 58, 148 C. C. A. 74.

Notes.—Claims owing on notes may be proved. *In re Wisconsin Engine Co.*, (C. C. A. 7th Cir. 1916) 234 Fed. 281, 148 C. C. A. 183; *In re Astoroga Paper Co.*, (N. D. N. Y. 1916) 234 Fed. 792; *In re Lance Lumber Co.*, (C. C. A. 3d Cir. 1916) 237 Fed. 357, 150 C. C. A. 371; *In re Biehl*, (E. D. Pa. 1916) 237 Fed. 720.

Where the evidence as a whole justifies the inferences that the payees of notes, executed by individual members of a firm understood that the loans were made to the firm and for its benefit and that the notes were given with the intention of binding the firm, and in the belief that such a result was being accomplished, it has been held that the notes are provable against the estate of the firm. *Frederick v. Citizen's Nat. Bank*, (C. C. A. 3d Cir. 1916) 231 Fed. 667, 145 C. C. A. 553.

The indorser on the note of a bankrupt who pays the note can not prove up his claim on the note so paid and also on the implied promise of the bankrupt made at the time of the indorsement to repay him in case he is compelled to pay such note. *In re Astoroga Paper Co.*, (N. D. N. Y. 1916) 234 Fed. 792.

A claim, evidenced by a note, for services rendered by a wife to her husband, contracts for which are permitted by the laws of the state, is provable and should not be made subordinate to the claims of other creditors. *In re Starr*, (N. D. Cal. 1916) 232 Fed. 416.

Checks.—One from whom a check was obtained by fraud does not have a provable claim against a bankrupt to whom it was indorsed and who occupies the position of a bona fide holder for value. *In re U. S. Hair Co.*, (C. C. A. 2d Cir. 1917) 239 Fed. 703, 152 C. C. A. 537.

Indorsements.—See to same effect as original annotation. *In re Henry*, (S. D. N. Y. 1916) 238 Fed. 639.

Surety debts.—Where the condition in a contractor's bond was broken, before his bankruptcy claims thereunder then became a "fixed liability." *U. S. v. Illinois Surety Co.*, (C. C. A. 7th Cir. 1915) 226 Fed. 653, 141 C. C. A. 409.

Rent.—Any amount which may have been due for rent of premises used by a bankrupt tenant, as well as any periodical payments reserved in a lease which have accrued at the time of the filing

of the petition in bankruptcy are claims representable and allowable against the estate. *In re Mullings Clothing Co.*, (D. C. Conn. 1916) 230 Fed. 681.

Where the state law gives the landlord a lien for the unexpired term of the lease, or any part of it, the claim for rent for that period may be proved in bankruptcy and enforced against the proceeds of the property subject to the lien, even though the debt may not be provable against the general estate. *Lontos v. Coppard*, (C. C. A. 5th Cir. 1917) 246 Fed. 803, 159 C. C. A. 105.

Claims under lease of machinery.—Where under such a lease no formal notice or re-entry is required in case of the termination of the lease by insolvency or bankruptcy, termination is coincident with the bankruptcy, itself and liability thereunder becomes fixed. *In re Desnoyers Shoe Co.*, (C. C. A. 7th Cir. 1915) 227 Fed. 401, 142 C. C. A. 97.

The expenses and compensation of an assignee for the benefit of creditors may be proved and allowed where the services rendered were beneficial to the estate. *Bramble v. Brett*, (C. C. A. 8th Cir. 1916) 230 Fed. 385, 144 C. C. A. 527; *In re Sobol*, (S. D. N. Y. 1915) 230 Fed. 652.

Interest.—In case of claims strictly against the assets of the bankrupt, interest is allowable only up to the time of filing the petition in bankruptcy.

But it is declared that this rule has no application to solvent estates. *In re McAusland*, (D. C. N. J. 1916) 235 Fed. 173.

Contingent claims.—This Act makes no provision for the payment of such claims and they are not provable. *In re Mullings Clothing Co.*, (D. C. Conn. 1916) 230 Fed. 681; *In re Astoroga Paper Co.*, (N. D. N. Y. 1916) 234 Fed. 792; *In re Mullings Clothing Co.*, (C. C. A. 2d Cir. 1916) 238 Fed. 58, 151 C. C. A. 134, L. R. A. 1918A 539.

Vol. I, p. 1064, sec. 63a (3).

Costs arising in connection with a writ of attachment in a state court which accrue up to the time of the institution of bankruptcy proceedings and which are provable and privileged under the state law, are provable and preferred. *In re Romm*, (D. C. Mass. 1916) 235 Fed. 383.

When a trustee contests the claim of an outsider, the controversy is inter partes and costs follow as in any other case. *In re All Star Feature Corp.*, (S. D. N. Y. 1916) 232 Fed. 1004.

Vol I, p. 1065, sec. 63a (4).

Contracts and open accounts.—Where a creditor has a claim of debt against a firm, evidenced by an absolute obligation

in writing for its payment, and also an optional claim in tort for misappropriation of money or property (the damages in which are measured by the same debt), and also has a claim against an individual upon a separate and independent contract of bailment (damages flowing from the breach of which are measured by the same debt), he may prove his claim of debt against the bankrupt estate of the firm, and (after allowing credit for the dividend received) prove a claim for the balance due him against the bankrupt estate of the individual, notwithstanding the fact that the individual is a member of the firm and liable as a partner for the firm debt. *In re Biehl*, (E. D. Pa. 1916) 237 Fed. 720.

A claim for damages for the breach of an executory contract of lease, where the lessee is a corporation and has voted to wind up and its stockholders have applied to the court for the appointment of a receiver to wind up its affairs and dissolve the corporation, is a claim founded upon a contract and provable in bankruptcy. *In re Mullings Clothing Co.*, (C. C. A. 2d Cir. 1916) 238 Fed. 58, 151 C. C. A. 134, L. R. A. 1918A 539.

Where a bankrupt made upon a good consideration a contract obligating him to pay the creditor a certain sum per day during the creditor's life, the undertaking is absolute, and the liability "fixed," "founded upon a contract" and therefore provable. *In re Miller*, D. C. Mass. 1915) 225 Fed. 331.

Taxes on personal property of a bankrupt, and which are due or past due, are quasi contractual and are provable debts. *Kaw Boiler Works v. Schull*, (C. C. A. 8th Cir. 1916) 230 Fed. 587, 144 C. C. A. 641, L. R. A. 1916E 628.

Stipulated attorney's fees on foreclosure of mortgage.—A sale free from liens in the Bankruptcy Court is not the equivalent of a foreclosure by the mortgagee of the mortgage lien, which will permit the mortgage to an allowance of an attorney's fee under a stipulation in the mortgage providing for the allowance of an attorney's fee in case legal proceedings are instituted on the note or mortgage. *Gugel v. New Orleans Nat. Bank*, (C. C. A. 5th Cir. 1917) 239 Fed. 676, 152 C. C. A. 510.

Breach occasioned by bankruptcy.—Bankruptcy has been held to constitute a breach of contract to be performed in the future, damages for which for the whole term are provable. *In re Schultz*, (D. C. Mass. 1916) 235 Fed. 907.

Upon a breach of an executory contract occasioned by bankruptcy, a sum stipulated to be liquidated damages in case of a breach has been held to be provable. *Board of Commerce v. Security Trust Co.*, (C. C. A. 6th Cir. 1915) 225 Fed. 454, 140 C. C. A. 486.

A claim for damages for the breach of an executory contract is a claim "founded upon a contract," within the meaning of the statute, and is provable in bankruptcy. *In re Mullings Clothing Co.*, (C. C. A. 2d Cir. 1916) 238 Fed. 58, 151 C. C. A. 134, L. R. A. 1918A 539.

The filing of an involuntary petition in bankruptcy against a corporation, followed by an adjudication of bankruptcy, is the equivalent of an anticipatory breach of its executory contract, where the trustee in bankruptcy does not elect to assume performance, and gives rise to a claim provable in the bankruptcy proceedings, as one "founded," "upon a contract, express or implied." *Central Trust Co. v. Chicago Auditorium Ass'n*, (1916) 240 U. S. 581, 36 S. Ct. 412, 60 U. S. (L. ed.) 811, L. R. A. 1917B 580.

A bankruptcy court, in allowing as a provable debt a claim for damages arising out of the anticipatory breach by the bankrupt of his executory contract with a hotel company, should not limit it to the damages for the six months following such breach, although the contract reserved to the hotel company an option to revoke the privileges by giving six months' notice in writing of its election so to do, in which case both parties were to be released from further liability at the expiration of the six months. *Central Trust Co. v. Chicago Auditorium Ass'n*, (1916) 240 U. S. 581, 36 S. Ct. 412, 60 U. S. (L. ed.) 811, L. R. A. 1917B 580.

Claims for tort.—A claim against a bailee for hire for the destruction of property in his possession although suable either in contract or tort is provable under this section. *Fingold v. Schacter*, (1916) 223 Mass. 274, 111 N. E. 903.

A claim for the conversion of money, founded on an implied contract to pay over any money collected, is a provable one. *Sabinal Nat. Bank v. Bryant*, (Tex. Civ. App. 1917) 191 S. W. 1179.

A claim for damages for the conversion of bonds and stocks has been held to be a provable debt. *Pitcairn v. Scully*, (1916) 252 Pa. St. 82, 97 Atl. 120.

The holder of collateral security has a special property in it which entitles him to recover its value, to the extent at least of his debt, if it be converted by the debtor. Such a liability, arising after the institution of the bankruptcy proceedings, would not however constitute a provable debt thereunder, and would not be affected by that law. *Harcastle v. National Clothing Co.*, (1917) 137 Tenn. 64, 191 S. W. 524.

A claim against stockbrokers who have repurchased stock left with them as collateral is a claim provable in bankruptcy as being one founded "upon a contract express or implied." *Wood v. Fiak*, (1915) 215 N. Y. 233, 109 N. E. 177. Compare *Pitcairn v.*

Scully, (1916) 252 Pa. St. 82, 97 Atl. 120.

Vol. I, p. 1074, sec. 63b.

Construction and application.—"It is thoroughly established that paragraph 'b' does not enlarge the class of debts which may be proved under paragraph 'a'; it does, however, permit an unliquidated claim to be liquidated as the court may direct provided, always, such claim is one within the provisions of 63a." *Moore v. Douglas*, (C. C. A. 9th Cir. 1916) 230 Fed. 399, 144 C. C. A. 541, *affirming* (S. D. Cal. 1915) 225 Fed. 683.

This provision relates merely to procedure, and does not define an additional class of debts which are provable. *In re Mullings Clothing Co.*, (C. C. A. 2d Cir. 1916) 238 Fed. 58, 151 C. C. A. 134, L. R. A. 1918A 539.

Reversed judgment.—Where a judgment in an action in a state court for breach of contract to marry, has been reversed the claim is an unliquidated one. *In re Martin*, (C. C. A. 2d Cir. 1915) 228 Fed. 184, 142 C. C. A. 540.

Vol. I, p. 1076, sec. 64a.

Construction and application.—The provisions of section 64 with relation to the payment of taxes, costs, filing fees, costs of administration, wages due to employees, and debts owing to any person entitled to priority, all pertain to the general assets of the estate, and have no relation to property which by reason of liens never became any part of the bankrupt estate. *In re Hosmer* (S. D. Ia. 1916) 233 Fed. 318.

This section should be strictly construed and its benefit should not be extended so as to allow the owner of premises against which a tax has been levied to claim priority for the payment of such taxes out of the assets of a bankrupt tenant who by the terms of the lease is obligated to pay them. *In re William A. Harris Steam Engine Co.*, (D. C. R. I. 1915) 225 Fed. 609.

This section has no reference to lien creditors, but is intended to apply only to general creditors, and should be read in connection with subsection "b" relating to debts that are to be paid in full. *Bird v. Richmond*, (C. C. A. 4th Cir. 1917) 240 Fed. 545, 153 C. C. A. 349.

Taxes entitled to priority.—Taxes valid under the state law are entitled to priority. *Delahunt v. Oklahoma County*, (C. C. A. 8th Cir. 1915) 226 Fed. 31, 141 C. C. A. 139; *In re United Five, etc., Cent Store*, (S. D. N. Y. 1917) 242 Fed. 1005.

Under this section taxes are placed in a class by themselves. They are not preferred claims against the estate; they stand ahead of preferred claims. *In re Ashland Emery, etc., Co.*, (D. C. Mass. 1916) 229 Fed. 829.

If there be general assets in the estate, the taxes will be given preference "in advance of the payments of dividends to creditors," as provided by section 64a; but in the absence of a lien this is the only priority to which the claim for taxes is entitled. *In re Hosmer*, (S. D. Ia. 1916) 233 Fed. 318.

Taxes which are not a lien are not to be given a priority over liens. *In re Hosmer*, (S. D. Ia. 1916) 233 Fed. 318.

Interest.—The state clearly has the right to charge upon taxes not paid when due such interest as will make the payment, when received, equivalent to payment at the appointed time. This interest is part of the tax and entitled to priority. *In re Ashland Emery, etc., Co.*, (D. C. Mass. 1916) 229 Fed. 829.

Penalty for failure to pay tax.—It cannot be said that a penalty imposed for failure to pay a tax is a part of the original tax, in the sense that interest is. A penalty, as applied to cases of this character, means a punishment imposed for failure to make the payment on time. Section 64a contains no provision for the payment of penalties; and it cannot fairly be construed to include them, especially when, the estate was in course of administration during the entire period when they accrued. *In re Ashland Emery, etc., Co.*, (D. C. Mass. 1916) 229 Fed. 829.

Duties on goods imported by the bankrupt are a "tax" within the meaning of this section. *In re Rosenthal*, (S. D. N. Y. 1916) 235 Fed. 315.

Mere volunteers who pay taxes have no claim against the trustee for the amount so paid. *In re Gracey*, (E. D. Pa. 1917) 241 Fed. 981.

Power of court to reassess tax.—There is said to be no doubt of the power and duty of the court to reassess the tax in case objection is made, regardless of its original assessment by the proper state authority. *In re Simcox*, (S. D. N. Y. 1917) 243 Fed. 479. See also *In re E. C. Fisher Corp.*, (D. C. Mass. 1915) 229 Fed. 316; *In re United Five, etc., Cent Store*, (S. D. N. Y. 1917) 242 Fed. 1005.

Vol. I, p. 1081, sec. 64b.

Term "bankrupt estates" construed.—By the words "of estates," in section 62, *supra*, and "bankrupt estates," in section 64, subsection "b," is meant the unincumbered assets generally of a bankrupt, properly administrable in bankruptcy, as distinguished from that of the property of a bankrupt dedicated by law to the payment of a particular obligation, or upon which there is a specific lien. The last named section is intended particularly to give the order to be observed by trustees in the payment of such unincumbered estate. *In re Rauch*, (E. D. Va. 1915) 226 Fed. 982.

Vol. I, p. 1081, sec. 64b (1).

Claim of assignment for creditors for preserving estate.—An assignee or trustee who has in good faith protected and preserved property to the benefit of the estate of a bankrupt under an assignment or trust deed valid while he was acting under it is entitled to payment of his legitimate expenses and to compensation for his services and for the services of his attorney out of the proceeds of the property he has preserved which subsequently comes to the trustee in bankruptcy. *Bramble v. Brett*, (C. C. A. 8th Cir. 1916) 230 Fed. 385, 144 C. C. A. 527. See *In re Sobol*, (S. D. N. Y. 1915) 230 Fed. 652.

Vol. I, p. 1083, sec. 64b (2).

Clerk's fee.—In the order of priority established by the statute the clerk's fee takes precedence over the fees of the bankrupt's attorney, and a bankrupt cannot reverse this order by paying his attorney first and not paying the clerk at all. *In re Darr*, (N. D. Cal. 1916) 232 Fed. 415.

Vol. I, p. 1083, sec. 64b (3).

The term "costs of administration" to which orders of court authorizing loans to the bankrupt estate in order to enable it to complete a contract, subjects such loans has been held to cover not only court costs but to refer to all the expenses attending the execution of those orders of the court entered with reference to the furnishing of a contract asset of the bankrupt, and to include labor and material claims. *In re Farley*, (C. C. A. 7th Cir. 1915) 227 Fed. 378, 142 C. C. A. 74.

Allowances in general.—See *In re Rauch*, (E. D. Va. 1915) 226 Fed. 982.

Compensation to receiver.—Assets in the hands of the trustee are subject to reduction by paying out of the same the amount for which in equity the assets were chargeable as compensation to the receiver before they came into the hands of the trustee, and claim therefor is entitled to priority. *Paine v. Archer*, (C. C. A. 9th Cir. 1916) 233 Fed. 259, 147 C. C. A. 265.

Expense of appraisal.—Where an appraisal was reasonably necessary, in connection with the proper preservation and care of the property received by the assignee, the assignee, if he has paid the expense of it, should be allowed therefor in his account with the trustee. *In re Cooper*, (D. C. Mass. 1917) 243 Fed. 797.

Attorneys' fees allowed.—The only legal services which may be paid or secured are those directly connected with the bankruptcy proceeding. *Magee v. Fox*, (C. C. A. 2d Cir. 1916) 229 Fed. 395, 143 C. C. A. 515.

Receiver's certificates issued under authority of the state court are not liens on the property when it comes into the Bankruptcy Court which the attorney's fees

allowed by law to the bankrupt can not displace. *Smith v. Shenandoah Valley Nat. Bank*, (C. C. A. 4th Cir. 1917) 246 Fed. 379, 158 C. C. A. 443.

Allowance confined to one fee.—*Division of fee.*—The court should not be called upon to settle differences between counsel for petitioning creditors as to what proportion of the total amount allowed each should receive. *Hall v. Reynolds*, (C. C. A. 8th Cir. 1916) 231 Fed. 946, 146 C. C. A. 142.

Services of counsel for trustee.—The fee should be reasonable and an excessive allowance will be reduced. *In re Atkins*, (W. D. Ky. 1915) 225 Fed. 639.

But it is for the trial court to determine the allowance to be made to attorneys for the trustee and the appellate courts will not reverse unless the decision is unmistakably wrong or unless a plain abuse of discretion is shown. *In re Grant*, (C. C. A. 2d Cir. 1916) 238 Fed. 132, 151 C. C. A. 208.

Attorneys fees for creditors.—What the law contemplates is that a creditor, who feels that a bankruptcy petition should be filed, shall have the right to employ an attorney to investigate the legal questions involved in the situation presented, and to give such advice as is necessary, and to investigate records, and to prepare the petition and file it; beyond this, an attorney's services are not necessary. *In re Sage*, (S. D. Ia. 1915) 225 Fed. 397. Where there is absence of evidence as to the value of services preformed by an attorney, the court determines it as a matter of discretion. *In re Williams*, (N. D. Ohio 1917) 240 Fed. 788.

Where petitioner and his associates were not actually petitioning creditors, either originally or by intervention, it was held that they did not become constructively such from the mere facts that during the pendency of the composition proceedings the petitioning creditors (who were with the majority favoring the composition) did not press their petition for adjudication, and that those opposing the composition urged that the case be brought to adjudication, and finally contributed to bringing about the hearing on the original petition, and it was decided that a claim for reimbursement was not sustainable as an attorney's fee "to the petitioning creditors in involuntary cases." *In re Kinnane Co.*, (C. C. A. 6th Cir. 1917) 242 Fed. 769, 155 C. C. A. 357.

Attorney's fee denied.—Services rendered to bankrupt prior to bankruptcy are not included by the terms of this provision. *Magee v. Fox*, (C. C. A. 2d Cir. 1916) 229 Fed. 395, 143 C. C. A. 515.

Counsel fees for services in resisting adjudication if allowed at all should only be allowed in extreme cases where such action is plainly necessary to avoid great hardship and injustice. *In re Murphy*

Boot, etc., Co., (D. C. Mass. 1917) 242 Fed. 991.

An attorney for a voluntary bankrupt is not entitled to a fee for services in having a homestead exemption set apart for said bankrupt and attending a hearing before the referee upon objections filed by creditors to such exemption. *In re Bohrman*, (S. D. Ga. 1915) 224 Fed. 287.

The services of counsel in advising the bankrupt regarding its business during the period between the filing of the petition and the adjudication of bankruptcy, including legal services in opposing attachment and lien proceedings, are not within this section. *In re Kinnane Co.*, (C. C. A. 6th Cir. 1917) 242 Fed. 769, 155 C. C. A. 357.

Effect of composition agreement.—In case of a composition the bankrupt must first pay the expenses of those who are entitled to payment out of the estate, including the allowance to the attorney for petitioning creditors, before the composition is approved, and, if necessary, the amount agreed upon by the bankrupt for his attorneys will be used to meet the expenses of the composition and of the bankruptcy proceedings. *In re Miller*, (E. D. N. Y. 1917) 243 Fed. 242.

Vol. I, p. 1090, sec. 64b (4).

Application.—This section only relates to the distribution of assets coming into the hands of the trustee and does not apply to moneys transferred before the bankruptcy occurred. *Riverside Cont. Co. v. New York*, (1916) 218 N. Y. 596, 113 N. E. 564.

Relation of master and servant contemplated.—To be entitled to priority as wages of workmen, clerk or servant the relation must be such as arises from the relation of master and servant. *In re Footville Condensed Milk Co.*, (W. D. Wis. 1916) 237 Fed. 136.

The word "servant" does not include all cases where the formal relation of master and servant exists. *In re All Star Feature Corp.*, (S. D. N. Y. 1916) 231 Fed. 251.

It means a restricted class of subordinate helpers who work for wages, but who are not salesmen, workmen, or clerks. *Keyes v. Davie*, (C. C. A. 9th Cir. 1916) 231 Fed. 688, 145 C. C. A. 574.

Priority in allowance of wages under Ohio Code.—See *Emerson v. Castor*, (C. C. A. 6th Cir. 1916) 236 Fed. 29, 149 C. C. A. 239.

The fact that the claimant's compensation was more than \$1,500 per year does not of itself disentitle him to priority under this section. *In re Schultz*, (D. C. Mass. 1916) 235 Fed. 907.

Who may claim wages—Clerks.—Where under the laws of a state the owners of rented buildings have so called "prefer-

ential" lien, and clerks, accountants, and laborers have a first lien only subordinate to the landlord's lien in the case of farm hands, clerks are properly given priority. *In re Woulfe*, (C. C. A. 5th Cir. 1916) 239 Fed. 128, 152 C. C. A. 170.

President of corporation.—"It is clear on the authorities that the president of a corporation as such is not entitled to wages as a preferred claim under the bankruptcy act." *In re Eagle Ice, etc., Co.*, (C. D. Pa. 1917) 241 Fed. 393. But see *In re Capital Paint Co.*, (N. D. Cal. 1916) 239 Fed. 424.

A treasurer and director is not entitled to priority under this section. *In re Boston French Range Co.*, (D. C. Mass. 1916) 235 Fed. 916.

The secretary, general manager and superintendent of a bankrupt corporation is not a "laborer," as that word is used in a state priority statute. *Wintermote v. MacLafferty*, (C. C. A. 9th Cir. 1916) 233 Fed. 95, 147 C. C. A. 165.

General manager of business.—"Servant" does not include the general manager of a business. *Keyes v. Davie*, (C. C. A. 9th Cir. 1916) 231 Fed. 688, 145 C. C. A. 574.

A mining engineer who is paid \$4000 per annum to advise and assist the superintendent in developing and operating the mine is not a "workman, clerk or servant" and his earnings are not wages entitled to priority. *In re Gay*, (D. C. Mass. 1916) 233 Fed. 604.

An actress commanding \$5000 for a four weeks engagement is not a workman or servant within the meaning of this provision. *In re All Star Feature Corp.*, (S. D. N. Y. 1916) 231 Fed. 251.

Wife of bankrupt.—Where the statutes of a state do not deny the right of the wife to contract with the husband for services rendered outside of her marital duties, a claim by her for wages for such services has been held to have priority. *In re Davidson*, (M. D. Ala. 1916) 233 Fed. 462.

Assignee of wage claim.—A person who has cashed checks given by the bankrupt to his workmen is an assignee and stands in the shoes of his assignor and is entitled to priority in payment. *In re Stultz*, (S. D. N. Y. 1915) 226 Fed. 989.

Effect of reducing claim to judgment.—In the case of *In re Haskell*, (D. C. Mass. 1915) 228 Fed. 819, it is declared, although it is said the question seems to be unsettled, that the priority given to claims for wages by this section is not lost by taking judgment on the claim before the institution of bankruptcy proceedings.

Order of priority—Preference or lien under state statutes.—In *Lott v. Salisbury*, (C. C. A. 4th Cir. 1916) 237 Fed. 191, 150 C. C. A. 337, it was held that a lien given a landlord for rent is entitled to priority over the claims of clerks.

Vol. I, p. 1100, sec. 64b (5).

Priorities accorded by state or federal laws.—Claims entitled to priority under state laws will also be entitled to priority in bankruptcy proceedings. *Louisville Woolen Mills v. Johnson*, (C. C. A. 6th Cir. 1916) 228 Fed. 606, 143 C. C. A. 128.

If a petitioner is entitled to "priority" by the laws of Porto Rico in respect of his debt, in the sense in which this section uses the term, the provisions of this section apply. *In re Vidal*, (C. C. A. 1st Cir. 1916) 233 Fed. 733, 147 C. C. A. 499. See *Gandia v. Cadierno*, (C. C. A. 1st Cir. 1916) 233 Fed. 739, 147 C. C. A. 505.

Order of priority.—"The bankruptcy law does not undertake to displace or invalidate bona fide liens upon the property of the bankrupt. It declares null and void liens that were given or accepted in fraud of the bankruptcy law, but all liens given or accepted in good faith and not in contemplation of bankruptcy nor in fraud of the bankruptcy act are entitled to recognition and payment in accordance with the law creating them. Section 64b of the Bankrupt Act (Act July 1, 1898, c. 541, 30 Stat. 563) which provides for the order of distribution of bankrupt's funds has no reference whatever to lien debts. It has reference to the distribution of the funds not subject to lien among nonlien creditors." *Lott v. Salisbury*, (C. C. A. 4th Cir. 1916) 237 Fed. 191, 150 C. C. A. 337.

Landlords right to priority.—A priority accorded the landlord by state laws will be recognized and enforced in the Bankruptcy Court. *In re W. R. Kuhn Co.*, (C. C. A. 3rd Cir. 1915) 225 Fed. 13, 140 C. C. A. 473; *Hattiesburg Bank v. Carter*, (C. C. A. 5th Cir. 1916) 232 Fed. 127, 146 C. C. A. 366; *In re Braus*, (S. D. N. Y. 1916) 233 Fed. 835; *In re Gerrow*, (E. D. Pa. 1916) 233 Fed. 845.

Where the statutes of a state give the landlord a specific lien upon any goods on the leased premises for rent it has been held that the claim of the landlord for the rent of the premises in which the bankrupt was conducting his business is superior to and entitled to priority over the claims of clerks for salary for the three months immediately preceding bankruptcy. *Lott v. Salisbury*, (C. C. A. 4th Cir. 1916) 237 Fed. 191, 150 C. C. A. 337.

The priority of liens as between mortgage lienholders and a landlord is determined by state laws. *Pretorius v. Anderson*, (C. C. A. 5th Cir. 1916) 236 Fed. 723, 150 C. C. A. 55.

If the landlord is not entitled to priority under the state law he is not entitled to priority under the bankrupt law. *In re Spies-Alper Co.*, (D. C. N. J. 1916) 231 Fed. 535.

Priority provided for decedent's estates.

—Where by the laws of a state a direction by a testator in his will that his debts be paid serves to charge such debts on his realty, the fact that some of the decedent's creditors did business with the bankrupt executrix of his estate and received payment on account thereof, as well as on their claims against testator, and that some of the payments were made by her as executrix, does not change the status of these creditors with respect to the priority of their claims against decedent's property. *In re McAusland*, (D. C. N. J. 1916) 235 Fed. 173.

Equitable rights.—If a petitioner claims to have a lien upon the funds in the hands of the trustees superior to the right of any other creditors to have their claims paid out of such funds, it is entitled in a proper proceeding to have such contention heard and determined before payment of such claim is actually made. For otherwise, if the trustees wrongfully and on their own responsibility paid out the funds, those having the superior claim thereon might to their disadvantage be obliged to resort to the personal liability of the trustees and their sureties to make good any loss occasioned through such improper payment. *In re O'Gara Coal Co.*, (C. C. A. 7th Cir. 1916) 235 Fed. 883, 149 C. C. A. 195.

Misappropriation by bankrupt.—Where the trustee contends that the fact that appellee filed an unsecured claim for the amount in controversy, which was allowed and on which it received a dividend, without asserting any right of priority, operates as an estoppel against its now asserting any such priority, it has been held that the estoppel cannot be sustained in the absence of a showing in the record that the trustee was in any way induced to change his position by the act of appellee, or that he has paid out funds for costs or dividends that he would have retained for the satisfaction of the appellee's prior claim, had he been advised it was to be asserted, or that the trustee was injured by delay in asserting the alleged priority of appellee's claim in the way of making his proof or otherwise. *Wuerpel v. Commercial Germania Trust, etc., Bank*, (C. C. A. 5th Cir. 1915) 238 Fed. 269, 151 C. C. A. 285.

Vol. I, p. 1106, sec. 65a.

Effect of oral promise by stockholder to pay creditor.—The fact that a stockholder who is also a creditor of a bankrupt corporation orally promised that the indebtedness to another creditor should be paid does not create any estoppel on the part of the stockholder from receiving dividends on an equality with such creditor.

Moise v. Scheibel, (C. C. A. 8th Cir. 1917) 245 Fed. 546, 157 C. C. A. 658.

Vol. I, p. 1112, sec. 67c.

Attachment liens acquired within the period are discharged. *In re Gilsonite Mines Co.*, (N. D. Cal. 1916) 236 Fed. 1015.

Vol. I, p. 1115, sec. 67d.

"To the extent of such present consideration only."—The interest which a present cash consideration bears is a part of the present consideration. *In re Mobile Chair Mfg. Co.*, (S. D. Ala. 1917) 245 Fed. 211.

Valid liens remain undisturbed.—See to same effect as original annotation. *Browning v. Gray*, (1917) 137 Tenn. 70, 191 S. W. 525; *Sullivan v. Myer*, (1917) 137 Tenn. 412, 193 S. W. 124.

The state law governs.—*In re Roberts*, (N. D. Ga. 1915) 227 Fed. 177.

Chattel mortgages.—Validity of such mortgages is determined by state laws. *In re Roberts*, (N. D. Ga. 1915) 227 Fed. 177.

Mechanics' and kindred liens.—A mechanics' lien, if ineffective under state laws, will not be given priority. *Varner v. New Hampshire Sav. Bank*, (1916) 240 U. S. 617, 36 S. Ct. 409, 60 U. S. (L. ed.) 828.

Mechanics' liens are liens created by statute, and by the act of the lienholders pursuant to the statute, without suits or legal proceedings, and paragraphs 67c-67f of the Bankruptcy Law cited are inapplicable to them. *Kemp Lumber Co. v. Howard*, (C. C. A. 8th Cir. 1916) 237 Fed. 574, 150 C. C. A. 456.

Materialmen's liens.—In *Louisville Woolen Mills v. Tapp*, (C. C. A. 6th Cir. 1917) 239 Fed. 463, 152 C. C. A. 341, a materialman's lien was held under the state statutes to be superior to the landlord's lien.

Landlord's lien.—Liens given a landlord under the laws of a state will be recognized and enforced in bankruptcy. *In re Mock*, (S. D. Miss. 1915) 228 Fed. 94; *Dellinger v. Waite-Thresher Co.*, (C. C. A. 1st Cir. 1915) 228 Fed. 506, 143 C. C. A. 88; *In re Hosmer*, (S. D. Ia. 1916) 233 Fed. 318; *Fudickar v. Glenn*, (C. C. A. 5th Cir. 1916) 237 Fed. 808, 151 C. C. A. 50.

Equitable liens.—An equitable lien will be recognized and enforced. *Johnson v. Root Mfg. Co.*, (1916) 241 U. S. 160, 36 S. Ct. 549, 60 U. S. (L. ed.) 934.

Pledges.—The rights of a pledgee are not affected by adjudication. *In re Progressive Wall Paper Corp.*, (N. D. N. Y. 1915) 224 Fed. 143; *Dodge v. Harris*, (C. C. A. 8th Cir. 1915) 224 Fed. 434, 140 C. C. A. 128.

Vol. I, p. 1122, sec. 67e.

Distinction between remedies under sections 60b and 67e.—"The provisions of sections 60b and 67e, . . . disclose a wide difference as to what is required to show liability. To establish a liability under the former section no actual fraud need be shown. The section merely condemns a transfer by bankrupt within four months for the purpose of creating a preference, providing the party receiving the transfer has reasonable cause to believe that a preference was intended. The legal remedy is entirely adequate, and no relief is offered in equity that the law does not afford. To establish a liability under section 67e actual fraud must be shown, and suits under that provision are peculiarly within the cognizance of and should be entertained by the equity court." *Simpson v. Western Hardware, etc., Co.*, (W. D. Wash. 1915) 227 Fed. 304.

Intent to hinder delay or defraud essential.—See to the same effect as the original annotation, *Johnson v. Barrett*, (N. D. Ga. 1916) 237 Fed. 112.

Mortgage given before not recorded until within four months.—Where a complaint, in an action to set aside a conveyance, alleges that there was no change of possession of the property, but that it remained in the open and notorious possession of the grantor, that the deed was withheld from record for the purpose of enabling the grantor to obtain credit upon his reputed and apparent ownership, and that such credit was obtained, it has been held that if these allegations are established the plaintiff trustee is entitled to the relief he seeks. *Manders v. Wilson*, (C. C. A. 9th Cir. 1916) 235 Fed. 878, 149 C. C. A. 190, Ann. Cas. 1918A 1052.

A part payment on a debt barred by statute of limitations recreates the obligation, and the promise thereby arising falls within the term "incumbrance" as used in this section. *In re Salmon*, (S. D. N. Y. 1916) 239 Fed. 413.

Bona fide purchasers protected.—See to the same effect as original annotation, *Grandison v. Robertson*, (C. C. A. 8th Cir. 1916) 231 Fed. 785, 145 C. C. A. 605; *Chambers v. Continental Trust Co.*, (S. D. Ga. 1916) 235 Fed. 441.

In an action to set aside a conveyance this section does not require proof of insolvency, as is the case with suits to recover voidable preferences, or to invalidate transfers held null by the laws of a state. *Senft v. Lewis*, (C. C. A. 2d Cir. 1917) 239 Fed. 116, 152 C. C. A. 158.

Extent of relief.—Where relief is sought by the trustee under this section, it may extend to the extinguishment of the lien created, as having been so created for the purpose of hindering, delaying and defrauding creditors. *Johnstone v. Babb*, (C. C. A. 4th Cir. 1917) 240 Fed. 665, 153 C. C. A. 466.

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- I. Annulment of liens generally.
- III. Judgment liens.
- IV. Attachment and garnishment liens.

I. ANNULMENT OF LIENS GENERALLY
(p. 1130)

Purpose of statute.—It was the intention of Congress and the legal effect of this section to grant to the courts of bankruptcy the power to effect an avoidance in summary proceedings of liens of the character there specified, obtained against persons who were insolvent at the respective times the liens were obtained, and those only, and that the insolvency of the person at the time the lien is acquired is an indispensable condition of the existence and of the exercise of the power. *Stone-Ordean-Wells Co. v. Mark*, (C. C. A. 8th Cir. 1915) 227 Fed. 975, 142 C. C. A. 433.

This section relates merely to levies, judgments, attachments, and liens which are acquired through legal proceedings, and does not affect contractual liens or quasi-contractual liens or rights, except perhaps as to matters of procedure. *Gray v. Arnot*, (1915) 31 N. D. 461, 154 N. W. 268.

Under this section those liens only are excepted which are established against a debtor not insolvent at their date. *Pearson Mowbray Co. v. Pershall*, (1916) 92 Wash. 516, 159 Pac. 682.

Landlord's lien.—In *Bird v. Richmond*, (C. C. A. 4th Cir. 1917) 240 Fed. 545, 153 C. C. A. 349, it is held that the landlord's lien is not a lien created through legal proceedings, though perfected by levying a distress warrant. See also *In re Mossler Co.*, (C. C. A. 7th Cir. 1917) 239 Fed. 262, 152 C. C. A. 250.

Where under the state law a vendor's lien is created as of the date of the contract of sale, a decree in a proceeding to enforce such lien, though rendered within the four months period, is not subject to the provisions of this section. *Farrell v. Wysong*, (C. C. A. 8th Cir. 1917) 246 Fed. 281, 159 C. C. A. 11.

III. JUDGMENT LIENS (p. 1134)

Judgment liens.—Where there is no order for the preservation of the lien of the judgment for the benefit of the estate such lien is by this section rendered null and void. *Finney v. Knapp Co.*, (Ga. 1916) 145 Ga. 400, 89 S. E. 413. See also *Dreyer v. Kicklighter*, (S. D. Ga. 1916) 228 Fed. 744.

In *Harvard v. Davis*, (1916) 145 Ga. 580, 89 S. E. 740, where a borrower of money executed a deed to secure the debt and received a bond for title as provided in Ga. Civ. Code 1910, § 3306, and suit was instituted for a general judgment and to subject the property to payment

of the debt, as provided in Ga. Civ. Code 1910, § 6037, and within four months next after rendition of the judgment, but more than four months after the debt and record of the security deed, the debtor was adjudged a bankrupt upon his voluntary petition in bankruptcy, it was held that the judgment was not invalid under this section.

Execution liens acquired within four months are invalid. In *re Fitzhugh Hall Amusement Co.*, (C. C. A. 2d Cir. 1916) 230 Fed. 811, 145 C. C. A. 121.

An execution lien which has become dormant may be revived by direction to the sheriff to proceed with the sale and where this is done it becomes prior to any liens acquired subsequent thereto. The revival is not a revival of the lien but of its priority. In *re Zeis*, (C. C. A. 2d Cir. 1917) 245 Fed. 737, 158 C. C. A. 139.

Where judgment liens are void under this section it follows that levies made of executions issued on the judgments and sales made by virtue thereof are also void. *Dreyer v. Kicklighter*, (S. D. Ga. 1916) 228 Fed. 744.

IV. ATTACHMENT AND GARNISHMENT LIENS (p. 1136)

Attachment and garnishment liens.—As to a lien created by attachment, see *Yumet v. Delgado*, (C. C. A. 1st Cir. 1917) 243 Fed. 519, 156 C. C. A. 217.

Attachment liens within the four months are rendered void. In *re Southern Arizona Smelting Co.*, (C. C. A. 9th Cir. 1916) 231 Fed. 87, 145 C. C. A. 275.

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Mutual debts and credits may be set off. *Clifford v. Oak Valley Milk Co.*, (D. C. Mass. 1916) 229 Fed. 851; *Roger v. J. B. Levert Co.*, (C. C. A. 5th Cir. 1916) 237 Fed. 737, 150 C. C. A. 491.

The credits do not adjust themselves automatically. In *re American Paper Co.*, (C. C. A. 3d Cir. 1917) 246 Fed. 790, 159 C. C. A. 92.

Any set-off or counterclaim must come within the provisions of this section. In *re Neaderthal*, (C. C. A. 2d Cir. 1915) 225 Fed. 36, 140 C. C. A. 364, so holding where a creditor of a bankrupt firm owed a debt to one of the partners.

Where a payment has been made to a creditor under such circumstances as to constitute it an illegal preference he is not entitled to have a debt owing to him from the bankrupt set off against the payment so made. *Rotan Grocery Co. v. West*, (C. C. A. 5th Cir. 1917) 246 Fed. 685, 158 C. C. A. 641.

Set-off between bank and depositor.—A bank which is a creditor of one who has a sum on deposit to his credit, and which has knowledge of the depositor's

insolvency, is entitled to apply the same on its claim as a set-off prior to bankruptcy proceedings. *Wichita Fourth Nat. Bank v. Smith*, (C. C. A. 8th Cir. 1916) 240 Fed. 19, 153 C. C. A. 55; *American Bank of Alaska v. Johnson*, (C. C. A. 9th Cir. 1917) 245 Fed. 312, 153 C. C. A. 504.

Whether the bank charges off the deposit of its customer and applies it on the indebtedness which it holds against the customer, or whether it draws a check in the name of the customer covering his deposit and applies it as a credit on the indebtedness, or whether it does neither of these things, but appeals to the law to do the same thing in effect, makes no difference as a legal proposition. *Wilson v. Citizens' Trust Co.*, (S. D. Ga. 1916) 233 Fed. 697.

As against a primary debt due to a bank on a note which is provable in bankruptcy the bank has the right to use deposits and also any obligations or securities which are in its hands for future collection, and without a specific agreement to apply them for the purpose of third parties. *In re Friedman*, (E. D. N. Y. 1917) 241 Fed. 603.

Set off of deposit not preference.—See to the same effect as the original annotation. *German-American State Bank v. Larimer*, (C. C. A. 8th Cir. 1916) 235 Fed. 501, 149 C. C. A. 47; *Putnam v. U. S. Trust Co.*, (1916) 223 Mass. 199, 111 N. E. 969; *Dunlap v. Seattle Nat. Bank*, (1916) 93 Wash. 568, 161 Pac. 364.

Set-off of judgment against interest on mortgage.—A judgment purchased by the mortgagor may be set off against the interest due on the mortgage where it appears that the judgment was not purchased with a view to a set off nor after the filing of the petition, or within four months before such filing, with a view to such use and with knowledge or notice that the bankrupt was insolvent or had committed an act of bankruptcy. *In re Colwell Lead Co.*, (S. D. N. Y. 1917) 241 Fed. 922.

Unpaid stock subscriptions due an insolvent corporation are not subjects of set-off against ordinary claims held by the subscribers against the corporation. *In re La Jolla Lumber, etc., Co.*, (S. D. Cal. 1917) 243 Fed. 1004.

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- II. Nature of trustee's title.
- III. Time when title passes.
- V. Burdensome property.
- VI. Exempt property.
- VII. Reclamation proceedings.

II. NATURE OF TRUSTEE'S TITLE (p. 1151)

Trustee takes bankrupt's title.—The trustee takes such title as the bankrupt had. *In re Place*, (N. D. N. Y. 1915)

224 Fed. 778; *In re Reading Hat Mfg. Co.*, (E. D. Pa. 1915) 224 Fed. 786; *Shafter v. Federal Cement Co.*, (E. D. Pa. 1915) 225 Fed. 893; *In re Scott*, (C. C. A. 7th Cir. 1915) 228 Fed. 201, 141 C. C. A. 653; *In re Cutler*, (E. D. N. C. 1916) 228 Fed. 771; *In re Hawley Down-Draft Furnace Co.*, (E. D. Pa. 1916) 233 Fed. 451; *Miller Rubber Co. v. Citizens Trust, etc., Bank*, (C. C. A. 9th Cir. 1916) 233 Fed. 468, 147 C. C. A. 374; *In re Neuburger*, (S. D. N. Y. 1916) 233 Fed. 701; *Pollack v. Meyer Bros. Drug Co.*, (C. C. A. 8th Cir. 1916) 233 Fed. 861, 147 C. C. A. 536; *In re Hamil*, (W. D. N. Y. 1916) 236 Fed. 292; *In re Wettengel*, (C. C. A. 3d Cir. 1916) 238 Fed. 798, 151 C. C. A. 648; *Memphis First Nat. Bank v. Towner*, (C. C. A. 6th Cir. 1917) 239 Fed. 433, 152 C. C. A. 311; *In re Neuburger*, (C. C. A. 2d Cir. 1917) 240 Fed. 947, 153 C. C. A. 633; *In re Friedman*, (E. D. N. Y. 1917) 241 Fed. 603; *In re Brantman*, (C. C. A. 2d Cir. 1917) 244 Fed. 101, 156 C. C. A. 529; *Citizens Coal, etc., Co. v. Custard*, (C. C. A. 4th Cir. 1917), 244 Fed. 425, 157 C. C. A. 51.

The trustee of a bankrupt succeeds to the bankrupt's title to corporate stock and has the bankrupt's rights and remedies as respects dividends which have been declared or which ought to have been declared. *In re Brantman*, (C. C. A. 2d Cir. 1917) 244 Fed. 101, 157 C. C. A. 51.

Title of trustee is subject to existing equities.—*In re Reading Hat Mfg. Co.*, (E. D. Pa. 1915) 224 Fed. 786; *Charles Roesch, etc., Co. v. Mumford*, (C. C. A. 3d Cir. 1916) 230 Fed. 56, 144 C. C. A. 354; *In re Wellmade Gas Mantle Co.*, (D. C. Mass. 1916) 230 Fed. 502; *In re McAusland*, (D. C. N. J. 1916) 235 Fed. 173; *Bransford v. Regal Shoe Co.*, (C. C. A. 5th Cir. 1916) 237 Fed. 67, 150 C. C. A. 269; *In re Imperial Textile Co.*, (N. D. N. Y. 1917) 239 Fed. 775; *In re Shelly*, (C. C. A. 3d Cir. 1917) 242 Fed. 251, 155 C. C. A. 91; *In re Terrell*, (C. C. A. 8th Cir. 1917) 246 Fed. 743, 159 C. C. A. 45.

Liens invalid as to creditors.—"It was clearly the intention of Congress in adopting the amendment of 1910 to paragraph 47, cl. A, of the Bankruptcy Act, that thereafter the trustee should not stand in the shoes of the bankrupt with regard to unrecorded liens depending for their validity upon registration, and that, as to the general creditors, such liens should be void." *In re Collins*, (E. D. La. 1914) 235 Fed. 937.

III. TIME WHEN TITLE PASSES (p. 1154)

Effect of commencement of proceedings.—The title of the trustee in bankruptcy is fixed as to the time of filing the peti-

tion. *Arnold v. Horrigan*, (C. C. A. 6th Cir. 1916) 238 Fed. 39, 151 C. C. A. 115; *In re Continental Coal Corp.*, (C. C. A. 6th Cir. 1916) 238 Fed. 113, 151 C. C. A. 189.

Property in custodia legis.—From the time of the filing of the petition the property of the bankrupt is in custodia legis. *Friedlaender's Petition*, (C. C. A. 1st Cir. 1916) 233 Fed. 250, 147 C. C. A. 256; *Fairbanks Steam Shovel Co. v. Wills*, (1915) 240 U. S. 642, 36 S. Ct. 466, 60 U. S. (L. ed.) 841.

Effect of adjudication.—Title passes to trustee as of date of adjudication. *In re Progressive Wall Paper Co.*, (C. C. A. 2d Cir. 1916) 229 Fed. 489, 143 C. C. A. 557, L. R. A. 1916E 563; *In re Neuburger*, (S. D. N. Y. 1916) 233 Fed. 701.

The rights of a trustee in bankruptcy in the debtor's property as of the date of adjudication are at least as great as those of an assignee in possession. *In re Howe*, (D. C. Mass. 1916) 235 Fed. 908.

V. BURDENSOME PROPERTY (p. 1160)

Acceptance optional with trustee — Generally.—"It is undisputed that a trustee in bankruptcy is under no obligation to accept a patent license burdened with executory obligations. It is, in this respect, like other property rights belonging to the bankrupt, whether resulting from a grant or conveyance coupled with executory obligations, like a lease of real or personal property, or from a purely executory agreement." *In re Wisconsin Engine Co.*, (C. C. A. 7th Cir. 1916) 234 Fed. 281, 148 C. C. A. 183.

VI. EXEMPT PROPERTY (p. 1162)

Title remains in bankrupt.—Title to exempt property remains in bankrupt and does not vest in trustee. *In re Brown*, (W. D. Ky. 1916) 228 Fed. 533; *In re French*, (N. D. N. Y. 1916) 231 Fed. 255; *In re Vonhee*, (W. D. Wash. 1916) 238 Fed. 422; *In re Auge*, (D. C. Mont. 1916) 238 Fed. 621; *Norwood v. Watson*, (C. C. A. 4th Cir. 1917) 242 Fed. 885, 155 C. C. A. 473; *Watters v. Hedgpeth*, (1916) 172 N. C. 310, 90 S. E. 314.

While it is true that title to exempt property does not pass to the trustee, yet it is said that he has what may be termed a defeasible title, and that he has temporary dominion over such property until the exemptions are made, after which the title of the bankrupt becomes superior to that of the trustee and absolute. *In re Vonhee*, (W. D. Wash. 1916) 238 Fed. 422. See also *In re Auge*, (D. C. Mont. 1916) 238 Fed. 621.

Of "exempt property a certain amount of control, but not title, passes to the bankrupt's trustee, only for orderly administration and to set it aside to the bankrupt. . . . If there are creditors against

whom the exemption fails, it is by reason of state law, and they are left to work out their remedy in the state court." *In re Auge*, (D. C. Mont. 1916) 238 Fed. 620.

Homesteads — Federal homestead lands.

—Title to such lands passes to the trustee where under state law they are only exempt as to debts prior to patent and there are debts subsequent thereto. *In re Auge*, (D. C. Mont. 1916) 238 Fed. 621.

VII. RECLAMATION PROCEEDINGS (p. 1165)

Right to reclaim.—The owner, other than the bankrupt, of property in the possession of the trustee may recover the same in some appropriate proceeding. *In re Midland Motor Co.*, (C. C. A. 7th Cir. 1915) 224 Fed. 368, 140 C. C. A. 54; *In re Pierson*, (S. D. N. Y. 1915) 225 Fed. 889; *In re National Home, etc., Co.*, (E. D. Mich. 1915) 226 Fed. 840; *In re New York Commercial Co.*, (C. C. A. 2d Cir. 1915) 228 Fed. 120, 142 C. C. A. 526; *In re Bondurant Hardware Co.*, (N. D. Ga. 1916) 231 Fed. 247; *In re Thomas*, (S. D. Ga. 1916) 231 Fed. 513; *McElwain-Barton Shoe Co. v. Bassett*, (C. C. A. 8th Cir. 1916) 231 Fed. 889, 146 C. C. A. 85; *In re Intercocean Transp. Co.*, (C. C. A. 2d Cir. 1916) 234 Fed. 863, 148 C. C. A. 461; *Mitchell Wagon Co. v. Poole*, (C. C. A. 6th Cir. 1916) 235 Fed. 817, 149 C. C. A. 129; *In re Wright, etc., Drug Co.*, (N. D. Ga. 1916) 237 Fed. 411; *In re Kaplan*, (C. C. A. 3d Cir. 1917) 241 Fed. 459, 154 C. C. A. 291; *In re Collins*, (M. D. Ala. 1917) 242 Fed. 975; *In re Sutton*, (E. D. Mich. 1917) 244 Fed. 872; *Jones v. H. M. Hobbie Grocery Co.*, (C. C. A. 5th Cir. 1917) 246 Fed. 431, 158 C. C. A. 495; *In re Aboudara*, (N. D. Cal. 1917) 246 Fed. 469.

Where a client furnishes a broker with funds on the agreement by the latter to buy certain shares of stock for him and apply the payment made to the purchase, and he does not buy the stock, but has the money in his possession when he goes into bankruptcy, no right to retain such money was created by his going into bankruptcy, and consequently no right passed to the broker's trustee. *In re Wettengel*, (C. C. A. 3d Cir. 1917) 238 Fed. 798, 151 C. C. A. 648.

Where property claimed has been taken and used by the trustee and the claimant proves his right thereto he may be allowed the fair value of the property. *Smith Wallace Shoe Co. v. Ternes*, (C. C. A. 8th Cir. 1916) 235 Fed. 282, 148 C. C. A. 642.

The fact that a bankrupt bank converted and dissipated the proceeds of a note collection does not operate to give the owner of the note a lien upon or right to priority of payment from the general assets of the bankrupt, to the prejudice of its general creditors. *Macy v. Roeden-*

beck, (C. C. A. 8th Cir. 1915) 227 Fed. 346, 142 C. C. A. 42, L. R. A. 1916C 12.

Where partnership assets are used by one partner to pay his individual debt without the consent of his copartners, the nonconsenting partner has the right to recover the property, and in case of bankruptcy, the trustee has the same right. A trustee in bankruptcy becomes vested with all the property rights of the bankrupt, and he is empowered to recover any property which the bankrupt could recover in order that it may be applied to the payment of his debts. *Ryan v. Cavanagh*, (S. D. Ia. 1916) 238 Fed. 604.

The burden of proof rests on the claimant. *In re Hunter-Rand Co.*, (E. D. N. C. 1917) 241 Fed. 175; *Schroth v. Monarch Fence Co.*, (C. C. A. 6th Cir. 1916) 229 Fed. 549, 144 C. C. A. 9.

Reclamation precluded by act of claimant.—Filing and proving claim is binding as an election. *In re Kaplan*, (M. D. Pa. 1916) 236 Fed. 280.

Vol. I, p. 1171, sec. 70a (5).
[Property which might have been transferred or levied upon.]

- II. Interests in real property, etc.
- III. Pledges.
- IV. Conditional sale.
- V. Trust funds and deposits.
- VII. Subscriptions for stock.
- VIII. Membership in stock exchange.
- IX. Contractual interests and obligations.

II. INTERESTS IN REAL PROPERTY, ETC.
 (p. 1174)

A desert entry under the laws of the United States is property which can be transferred within the meaning of this section, although final proof has not yet been made. *In re Evans*, (D. C. Idaho 1916) 235 Fed. 956.

Vested remainder passes to trustee.—*In re Dorgan*, (S. D. Ia. 1916) 237 Fed. 507.

Encumbered property.—This section does not mean that the status of the mortgagee is exactly that of the mortgagor for all purposes. In some particulars his rights are greater. The mortgagee, however, is the virtual owner of the land and entitled to the rents. *In re Donner*, (D. C. N. J. 1917) 243 Fed. 984.

III. PLEDGES (p. 1178)

Where life insurance policies have been pledged, although they pass to the trustee, they are subject to the indebtedness for which they were pledged, and it is proper that the trustee in bankruptcy be directed on the delivery to him by the

claimants of the two policies for that purpose, to receive from the bankrupt or collect from the insurance company such surrender value and apply the proceeds to the payment of the indebtedness of the bankrupt to them. *In re Baird*, (D. C. Del. 1917) 245 Fed. 504.

IV. CONDITIONAL SALE (p. 1181)

Goods sold for purpose of resale.—A nominal understanding between seller and purchaser as to payment and title not intended to be acted on unless the bankrupt gets into financial difficulties has been held fraudulent as to creditors and invalid as against the trustee. *In re Aronson*, (D. C. Mass. 1917) 245 Fed. 207.

In the following cases title to goods sold on consignment contract was held to vest in trustee. *In re Reeves*, (N. D. N. Y. 1915) 227 Fed. 711; *In re Stoughton Wagon Co.*, (C. C. A. 6th Cir. 1916) 231 Fed. 676, 145 C. C. A. 562; *Walter A. Wood Mowing, etc., Mach. Co. v. Croll*, (C. C. A. 6th Cir. 1916) 231 Fed. 679, 145 C. C. A. 565.

If the sale is valid and binding in all respects the vendor may exercise the right to reclaim the property. *In re I. S. Remson Mfg. Co.*, (C. C. A. 2d Cir. 1916) 232 Fed. 594, 146 C. C. A. 552; *In re Hamil*, (W. D. N. Y. 1916) 236 Fed. 292; *Ewart v. Squire*, (C. C. A. 4th Cir. 1916) 239 Fed. 34, 152 C. C. A. 84; *Shook v. Levi*, (C. C. A. 9th Cir. 1917) 240 Fed. 121, 153 C. C. A. 157.

The burden of proving that a sale was conditional rests on the one affirming it. *In re Farmers' Dairy Ass'n*, (S. D. Cal. 1916) 234 Fed. 118; *Shook v. Levi*, (C. C. A. 9th Cir. 1917) 240 Fed. 121, 153 C. C. A. 157.

V. TRUST FUNDS AND DEPOSITS (p. 1185)

Where bankrupt is beneficiary.—The interest of a bankrupt in a trust fund, which was capable of transfer at institution of proceedings, passes to trustee. *Pollack v. Meyer Bros. Drug Co.*, (C. C. A. 8th Cir. 1916) 233 Fed. 861, 147 C. C. A. 535.

Where a testator bequeathed a certain sum in trust to pay the income to his son, during his life, with a remainder over to others, subject to the "wish . . . that . . . my said son shall have the principal of said trust fund whenever he shall become financially solvent and able to pay all his just debts and liabilities from resources other than the principal of this trust fund," it was held that it was that on payment of the sum to the son after the latter's discharge in bankruptcy the trustee acquired no right thereto. *Hull v. Farmers' Loan, etc., Co.*, (1917) 245 U. S. 312, 38 S. Ct. 103, 62 U. S. (L. ed.) 312.

The equitable life interest of the beneficiary in a trust created by a bequest of

a fund to a trustee to pay the entire net income thereof to the beneficiary for life, "free from the interference or control of her creditors," does not pass to her trustee in bankruptcy, where the local law treats such restrictions against interference or control by creditors as limiting the character of the equitable property, and inherent in it. *Eaton v. Boston Safe Deposit, etc., Co.*, (1916) 240 U. S. 427, 36 S. Ct. 391, 60 U. S. (L. ed.) 723.

Burden of proof.—Where a company, in whose store complainant conducted a department, agreed to keep the proceeds of the complainant's sales "in trust" for the latter's benefit, it has been held that the burden of proof is upon the complainant to clearly trace the proceeds of said sales into "some specific fund or property" in the hands of the trustee in bankruptcy. *In re A. D. Matthews' Sons*, (C. C. A. 2d Cir. 1916) 238 Fed. 785, 151 C. C. A. 635.

VII. SUBSCRIPTIONS FOR STOCK (p. 1188)

Trustee may recover stock subscriptions.—*Kelley v. Aarons*, (S. D. Cal. 1917) 238 Fed. 996.

Where the state laws and decisions do not give a right of action to recover from stockholders who have not paid in full for their stock, no right to recover vests in the trustee. *In re Huffman-Salvar Roofing Paint Co.*, (N. D. Ala. 1916) 234 Fed. 798; *Courtney v. Croxton*, (C. C. A. 6th Cir. 1917) 239 Fed. 247, 152 C. C. A. 235.

The claims of stockholders who have loaned money to the corporation will not, where there is no suggestion that they are not financially responsible, be postponed until the collection of assessments on unpaid stock subscriptions has been had and other creditors paid in full. *Courtney v. Croxton*, (C. C. A. 6th Cir. 1917) 239 Fed. 247, 152 C. C. A. 235.

Bona fide purchaser of voting trust certificates not the original subscribers, who have purchased in the open market, have a right to rely on statements in the certificates that the stock is fully paid, and one not liable for an unpaid balance thereon. *Clark v. Johnson*, (C. C. A. 8th Cir. 1917) 245 Fed. 442, 157 C. C. A. 604.

When the assessment on unpaid stock subscriptions is to be ascertained, no dividends should be paid to a stockholder of such stock until the assessment is fully paid, but in case it is paid then the claim should be allowed and share equally in the payment of dividends with those of the same class. *Moise v. Scheibel*, (C. C. A. 8th Cir. 1917) 245 Fed. 546, 157 C. C. A. 658.

The amount of the assessment to be levied upon stock which has not been fully paid can only be determined in a proceeding brought by the trustee. *Moise v.*

Scheibel, (C. C. A. 8th Cir. 1917) 245 Fed. 546, 157 C. C. A. 658.

Jurisdiction.—A suit to enforce the collection of unpaid stock subscriptions is properly brought on the equity side of the court. *Kelley v. Aarons*, (S. D. Cal. 1917) 238 Fed. 996.

The action of the Bankruptcy Court is conclusive, so far as the necessity of an assessment against any unpaid stock that may exist is concerned, and also as to the rate of the assessment, but beyond these facts the stockholder is not concluded by the action of the Bankruptcy Court. *Enright v. Heckscher*, (C. C. A. 2d Cir. 1917) 240 Fed. 863, 153 C. C. A. 549.

VIII. MEMBERSHIP IN STOCK EXCHANGE (p. 1189)

Membership in a board of trade is property which passes to the trustee. *Board of Trade v. Weston*, (C. C. A. 7th Cir. 1917) 243 Fed. 332, 156 C. C. A. 112.

IX. CONTRACTUAL INTERESTS AND OBLIGATIONS (p. 1191)

"Creditors participating in the distribution."—Creditors in respect to whose claims the court has ordered that the claim of each "be wholly withdrawn from said bankruptcy proceeding and expunged from the list of claims upon the record in this case and excluded from participating in the distribution of the estate . . . of the bankrupt," do not come within the meaning of this clause. *Andrews v. Nix*, (1918) 246 U. S. 273, 38 S. Ct. 249, 62 U. S. (L. ed.) 268.

When property traceable.—"Cash is never traced by showing that it went into the general estate." *In re A. D. Matthews' Sons*, (C. C. A. 2d Cir. 1916) 238 Fed. 785, 151 C. C. A. 635.

Contract invalid as to lien creditors.—Seller has no remedy where contract invalid because not properly executed or recorded. *In re M. L. B. Sturkey Co.*, (W. D. S. C. 1915) 224 Fed. 251; *In re Kruse*, (N. D. Ia. 1916) 234 Fed. 470; *Citizens' Coal, etc., Co. v. Custard*, (C. C. A. 4th Cir. 1917) 244 Fed. 425, 157 C. C. A. 51.

Fire insurance policy.—Right of trustee to proceeds of fire insurance policy as against mortgagees, see *In re Stucky Trucking, etc., Co.*, (D. C. N. J. 1917) 240 Fed. 427.

Vol. I, p. 1196, sec. 70a (5).

[Policy of insurance.]

An industrial policy payable to the executors or administrators only at the discretion of the insurer does not pass to the trustee. *In re Gannon*, (S. D. N. Y. 1917) 241 Fed. 733.

Policies not payable to bankrupt or his estate or personal representatives.—This

section applies only when an insurance policy has a cash surrender value, payable to the bankrupt, his estate, or personal representatives, and a policy payable to the wife, in which is reserved no right to change the beneficiary, does not pass to the trustee. *In re Majors*, (D. C. Ore. 1917) 241 Fed. 538; *In re Fetterman*, (N. D. Ohio 1917) 243 Fed. 975.

Exempt policies do not pass.—*In re Flanigan*, (E. D. Pa. 1915) 228 Fed. 339; *In re Cohen*, (S. D. Ga. 1916) 230 Fed. 733; *Frederick v. Metropolitan Life Ins. Co.*, (W. D. Pa. 1916) 235 Fed. 639; *In re Rosenberg-Oldstein Co.*, (E. D. La. 1916) 236 Fed. 812; *In re Fetterman*, (N. D. Ohio 1917) 243 Fed. 975.

When the insured has died, and the beneficiary has furnished due proof and made timely demand for the contracted sum, the company, "without notice of any character as to any adverse claim thereto," is not only justified, but contractually bound, to pay the money to her. Having done so, having fulfilled its promises, it is entitled to a surrender of the contract it has fully and in good faith fulfilled. Such being the case it is manifest that the trustee has no legal right to again collect the whole amount of this policy from the company. *Frederick v. Metropolitan Life Ins. Co.*, (C. C. A. 3d Cir. 1917) 239 Fed. 125, 152 C. C. A. 167.

Effect of right to change beneficiary.—See to same effect as original annotation. *Cohen v. Samuels*, (1917) 245 U. S. 50, 38 S. Ct. 36, 62 U. S. (L. ed.) 143, *reversing* (C. C. A. 2d Cir. 1916) 237 Fed. 796, 151 C. C. A. 38; *In re Shoemaker*, (E. D. Pa. 1915) 225 Fed. 329; *In re Bonvillain*, (E. D. La. 1916) 232 Fed. 370; *Malone v. Cohn*, (C. C. A. 5th Cir. 1916) 236 Fed. 882, 150 C. C. A. 144. *Compare In re Arkin*, (C. C. A. 2d Cir. 1916) 231 Fed. 947, 146 C. C. A. 143.

Where there is nothing more than the naming of the wife as beneficiary, and this is revocable by the husband, there the trustee may surrender the policy and receive the surrender value, and he does not lose this right unless paid an equivalent sum. If, however, there had been a bona fide assignment to the wife of the whole policy, including the right to the cash surrender value as well as the insurance moneys; and a fortiori, if the assignment has been for value, or before any debts were contracted by the husband, so that the policy was the property of the wife, the trustee could not surrender the policy or successfully claim its surrender value. *In re Flanigan*, (E. D. Pa. 1915) 228 Fed. 339.

Question of fact.—Question of title, in reclamation proceedings, is one of fact. *In re Aronson*, (D. C. Mass. 1917) 245 Fed. 207.

Vol. i, p. 1204, sec. 70b.

- I. Appraisal of property.
- II. Sales.

I. APPRAISAL OF PROPERTY (p. 1204)

"An appraisal in bankruptcy is an estimate of the value of the bankrupt estate made by three disinterested persons. The appraisers are officers of the court and are selected with an especial regard to their fitness to give an opinion upon the value of the particular property comprising the estate." *Jacobsohn v. Larkey*, (C. C. A. 3d Cir. 1917) 245 Fed. 538, 157 C. C. A. 650, L. R. A. 1918C 1176. See also *In re Mills Tea, etc., Co.*, (D. C. Mass. 1916) 235 Fed. 812.

II. SALES (p. 1205)

Manner of selling assets.—*The power to sell is under the direction of the court.*—The trustee can only sell in accordance with the authority given by law. *In re Eden Musee American Co.*, (S. D. N. Y. 1916) 230 Fed. 925.

A sale through proceedings in bankruptcy is a judicial sale subject to the same rules as an auction. The bidder may withdraw his bid at any time before the hammer falls. *In re Glas-Shipt Dairy Co.*, (C. C. A. 7th Cir. 1917) 239 Fed. 122, 152 C. C. A. 164.

Sale of assets free of incumbrances may be ordered. *In re Whiteside*, (N. D. Ga. 1916) 230 Fed. 937; *In re West*, (M. D. Pa. 1916) 232 Fed. 903.

When a lienholder accepts service of a petition to sell property free from liens such acceptance operates as a consent that it be sold on such terms. *Gugel v. New Orleans Nat. Bank*, (C. C. A. 5th Cir. 1917) 239 Fed. 676, 152 C. C. A. 510.

A mortgagee, who stands by and without objection or demand for the mortgaged property knowingly permits a court order sale by a trustee in bankruptcy for less than the amount of the secured debt, will be limited in his preferred claim to the proceeds of the sale. Furthermore, even if a mortgagee knows nothing of the bankruptcy, the sale, or the order, his recovery would be limited to the actual value of the property sold. *In re States Printing Co.*, (C. C. A. 7th Cir. 1917) 241 Fed. 245, 154 C. C. A. 165.

Setting aside sale.—*Inadequacy of price.*—"The rule is that mere inadequacy of price is not a sufficient ground for setting aside a judicial sale; but when the inadequacy is so great as in itself to raise a presumption of fraud or to shock the conscience of the court, it becomes gross inadequacy, and is a sufficient ground." *Jacobsohn v. Larkey*, (C. C. A. 3d Cir. 1917) 245 Fed. 538, 157 C. C. A. 650, L. R. A. 1918C 1176.

A contract of sale entered into by a corporation before bankruptcy, will not be set aside for mere inadequacy of consideration where it would result in an expensive litigation, involving delay and loss to the estate. *In re Copiag-Linden-hurst Co.*, (N. D. N. Y. 1917) 240 Fed. 431.

Confirmation of sale involves exercise of judicial discretion. *In re Finks*, (C. C. A. 6th Cir. 1915) 224 Fed. 92, 139 C. C. A. 648.

When in a given case a price is grossly inadequate and when upon that ground confirmation should be refused, are matters within the judgment and discretion of the tribunal ordering the sale. *Jacob-son v. Larkey*, (C. C. A. 3d Cir. 1917) 245 Fed. 538, 157 C. C. A. 650, 1 R. A. 1918C 1176.

An order directing the trustee to sell all his right, title and interest in the estate of the bankrupt is not subject to objection by an adverse claimant. *In re Vanoscope Co.*, (C. C. A. 2d Cir. 1917) 244 Fed. 445, 157 C. C. A. 71.

Nunc pro tunc order.—An order of confirmation will not be treated nunc pro tunc of an earlier date where it would result in injustice. *In re Finks*, (C. C. A. 6th Cir. 1915) 224 Fed. 92, 139 C. C. A. 648.

Vol. I, p. 1212, sec. 70e. [*Avoiding certain transfers—recovery of property.*]

Power conferred on trustee.—Trustees may impeach or set aside any fraudulent act or transaction of the bankrupt or assert any right which the creditor might have asserted. *Stellwagen v. Clum*, (1918) 245 U. S. 605, 38 S. Ct. 215, 62 U. S. (L. ed.) —; *In re Webb Co.*, (E. D. Pa. 1915) 224 Fed. 258; *Cardozo v. Brooklyn Trust Co.*, (C. C. A. 2d Cir. 1915) 228 Fed. 333, 142 C. C. A. 625; *In re Progressive Wall Paper Corp.*, (C. C. A. 2d Cir. 1916) 229 Fed. 489, 143 C. C. A. 557, 1 R. A. 1916E 563; *Owens v. Daniel*, (C. C. A. 5th Cir. 1916) 230 Fed. 101, 144 C. C. A. 399; *In re Progressive Wall Paper Corp.*, (N. D. N. Y. 1916) 230 Fed. 171; *Manders v. Wilson*, (C. C. A. 9th Cir. 1918) 235 Fed. 878, 149 C. C. A. 190, Ann. Cas. 1918A 1052; *Memphis First Nat. Bank v. Towner*, (C. C. A. 6th Cir. 1917) 239 Fed. 433, 152 C. C. A. 311; *Edison Electric Illuminating Co. v. Tibbetts*, (C. C. A. 1st Cir. 1917) 241 Fed. 468, 154 C. C. A. 300; *McGill v. Commercial Credit Co.*, (D. C. Md. 1917) 243 Fed. 637; *Angle v. Bankers' Surety Co.*, (C. C. A. 2d Cir. 1917) 244 Fed. 401, 157 C. C. A. 27.

Power is conferred upon a trustee to recover all the property transferred in fraud of creditors, although such recovery may result in the possession by the trustee of

property in excess of the entire indebtedness of the bankrupt *Davis v. Gates*, (M. D. Pa. 1916) 235 Fed. 192.

The trustee may sue for tortious injuries inflicted upon the estate property intermediate the petition and the adjudication as to hold otherwise would be to say that the estate may be destroyed with impunity. *Arnold v. Horrigan*, (C. C. A. 6th Cir. 1916) 238 Fed. 39, 151 C. C. A. 115.

The trustee can act for all the creditors in asserting their rights to liens upon property coming into his custody by legal or equitable proceedings. *Sanborn-Cutting Co. v. Paine*, (C. C. A. 9th Cir. 1917) 244 Fed. 672, 157 C. C. A. 120.

It is, to be assumed in the absence of proof to the contrary that the trustee as representing creditors has been injured by a conveyance executed by the bankrupt in fraud of his creditors, but it is not necessary that the extent to which he has been so injured should be equal to the entire value of the property conveyed. *Davis v. Gates*, (M. D. Pa. 1916) 235 Fed. 192.

Where a check was delivered by the bankrupt before but not paid until after petition and adjudication it was held that the trustee was entitled to recover the amount of the check, the delivery of the check not operating as an assignment or segregation of the funds on deposit, nor impressing those funds with any trust in favor of the payee. *In re Howe*, (D. C. Mass. 1916) 235 Fed. 908.

Transfer which any creditor "might have avoided."—The provision that "a trustee may avoid any transfer by the bankrupt of his property which any creditor of such bankrupt might have avoided," etc., means "which any creditor might have avoided" under the laws of the state where the transaction occurred. *Manders v. Wilson*, (N. D. Cal. 1915) 230 Fed. 536.

Bill in equity.—Trustee may file bill in equity to recover property which has been fraudulently transferred by the bankrupt. *Davis v. Gates*, (M. D. Pa. 1916) 235 Fed. 192.

Bona fide transactions are excepted.—*Brent v. Simpson*, (C. C. A. 5th Cir. 1916) 238 Fed. 285, 151 C. C. A. 301.

Pleading.—A trustee in a suit to set aside a conveyance by a bankrupt is entitled to the relief sought where the petition alleges that there was no change of possession of the property, but that it remained in the open and notorious possession of the grantor, that the deed was withheld from record for the purpose of enabling the grantor to obtain credit upon his reputed and apparent ownership, and that such credit was obtained. *Manders v. Wilson*, (C. C. A. 9th Cir. 1916) 235 Fed. 878, 149 C. C. A. 190, Ann. Cas. 1918A 1052.

Vol. I, p. 1216, sec. 70e. [Jurisdiction.]

A court of bankruptcy has summary jurisdiction of a proceeding by the trustee to compel a third person, to turn over to him property in the latter's possession and which is alleged to belong to the bankrupt's estates where the sole question is one of law. *In re Midtown Contracting Co.*, (S. D. N. Y. 1916) 238 Fed. 871.

Vol. I, p. 1219, sec. 70f.

After a composition has been confirmed the receiver has no right to receive any property as the property of the bankrupt and a pledgee of such property has no

right to turn it over to the receiver; nor has the Bankruptcy Court jurisdiction to pass on claims made by third parties to any property thereafter turned over. *In re Hollins*, (C. C. A. 2d Cir. 1916) 238 Fed. 787, 151 C. C. A. 637.

Vol. I, p. 1220, sec. 72.

Bar to extra allowance.—This section and section 48a limit the court in its allowance to trustees. *In re New York Commercial Co.*, (C. C. A. 2d Cir. 1916) 231 Fed. 445, 145 C. C. A. 439. See also *In re Langford*, (S. D. Cal. 1915) 225 Fed. 311; *American Surety Co. v. Freed*, (C. C. A. 3d Cir. 1913) 224 Fed. 333, 140 C. C. A. 19.

CARRIERS

Vol. II, p. 15, sec. 13.

Action on bond.—In an action on a bond voluntarily given to secure penalties incurred by violation of this Act, the court to determine its meaning, may look not only to the language of the instrument, but to the subject matter and surrounding circumstances, and while the bond is not a statutory bond, it is valid as a common-law obligation. *Findlay v. U. S.*, (C. C. A. 9th Cir. 1915) 225 Fed. 337, 139 C. C. A. 207.

Mitigation or remission of penalty.—

While the Secretary of Commerce has no authority to remit or mitigate any of the penalties incurred under this Act, he has revisory and supervisory authority to inquire and determine whether the statute has been violated and the extent of such violation if any, and in accordance with such determination to direct the prosecution of the case or its abandonment in whole or in part as the facts found on examination may justify. *Findlay v. U. S.*, (C. C. A. 9th Cir. 1915) 225 Fed. 337, 139 C. C. A. 207.

CHINESE EXCLUSION

Vol. II, p. 67, sec. 1.

"Chinese laborers" defined.—The words "Chinese laborers" as used in the Act, was intended to designate all immigration to the United States from China other than that of privileged classes. *U. S. v. Jew Sung Gwong*, (D. C. Ore. 1916) 232 Fed. 279.

Merchant afterwards becoming laborer.

—The mere fact that an alien who has been domiciled as a merchant thereafter becomes a laborer does not itself justify deportation. *Ong Seen v. Burnett*, (C. C. A. 9th Cir. 1916) 232 Fed. 850, 147 C. C. A. 44.

Chinese persons born in United States.

—The Chinese Exclusion Act does not apply to persons of that race, even though laborers, if they were born in the United States, of parents living in the United States. *U. S. v. Ching Hing*, (D. C. Me. 1915) 225 Fed. 794.

Evidence of citizenship.—Where a Chinese person seeks to remain in the United

States upon the claim that he was born in this country, the burden is upon him to prove it, and where the commissioner and the district judge determine the fact as to the place of birth, such determination will not be disturbed on appeal. *Jew Lee v. U. S.*, (C. C. A. 2d Cir. 1916) 237 Fed. 1013, 151 C. C. A. 75.

Vol. II, p. 71, sec. 6.

Force and effect of certificate.—The admission of a Chinese person into this country, under a merchant's certificate admittedly in due form, places him in the exempt class, and he cannot be deported from having fraudulently entered the United States unless there is some competent evidence to overcome the legal effect of the certificate. *U. S. v. Fong Hong*, (D. C. N. J. 1916) 233 Fed. 168, following *Liu Hop Fong v. U. S.*, (1908) 209 U. S. 453, 28 S. Ct. 676, 52 U. S. (L. ed.) 888.

Certificate prima facie evidence.—The certificate is prima facie evidence only

of the facts set forth therein and may be controverted and the facts there stated may be disproved by the United States authorities. *U. S. v. Fong Hong*, (D. C. N. J. 1916) 233 Fed. 168; *Lo Pong v. Dunn*, (C. C. A. 8th Cir. 1916) 235 Fed. 510, 149 C. C. A. 56.

The certificate of admission is *prima facie* evidence of such right. But it is open to the government to show that the entry was in fact not for the purpose of following the occupation of a merchant but for the purpose of immediately becoming a laborer, in evasion of the Exclusion Act. And the court, if so satisfied, is justified in holding that the entry was in violation of the statute and not the one so entering is unlawfully here. *Lew Loy v. U. S.* (C. C. A. 6th Cir. 1917) 242 Fed. 405, 155 C. C. A. 181.

Annulment of certificate.—While the certificate is *prima facie* evidence of the right to enter and remain in the country and it may be overcome by competent evidence that it was fraudulently obtained, fraud in procuring the same can not be merely imputed. It is incumbent upon the government to overcome its legal effect by evidence and not by presumption. It ought not to be annulled on suspicion and conjecture. *Moy Kong Chiu v. U. S.*, (C. C. A. 7th Cir. 1917) 246 Fed. 94, 158 C. C. A. 320.

Wife of Chinese merchant.—The right of the wife of a resident Chinese merchant, to enter this country, is beyond question. *Ex parte Chan Shee*, (N. D. Cal. 1916) 236 Fed. 579.

Children of Chinese merchants — Minor son becoming laborer.—It is well settled that a minor son of a member of the exempt classes, admitted as such into the United States, does not forfeit his right to remain by subsequently doing a laborer's work. *Ex parte Wong Yee Toom*, (D. C. Md. 1915) 227 Fed. 247, *reversed* on other ground (C. C. A. 4th Cir. 1916) 233 Fed. 194, 147 C. C. A. 200; *Lam Fung Yen v. Frick*, (C. C. A. 6th Cir. 1916) 233 Fed. 393, 147 C. C. A. 329.

The fact that one who lawfully entered as the minor son of a merchant has since become a laborer is not enough to destroy his right to remain. *Lew Loy v. U. S.*, (C. C. A. 6th Cir. 1917) 242 Fed. 405, 155 C. C. A. 181.

But it is open to the government to show that the entry of a minor son was not for the purpose of conserving the family relation or following the occupation of a merchant. So, the fact that a Chinese person, securing admission as the son of a merchant, is 20 years of age, immediately becomes and continues as a laborer, is strong evidence tending to show that he came into the United States as a laborer. *Lew Loy v. U. S.*, (C. C. A. 6th Cir. 1917) 242 Fed. 405, 155 C. C. A. 181.

Vol. II, p. 75, sec. 10.

Who is "master."—The owner of the minority interest in a gasoline launch without the knowledge or consent of the owner of the majority interest and in violation of agreement, had himself enrolled as master and used the vessel to bring Chinese persons to a United States port, where the vessel was seized under this Act. It was held that such minority owner was not the master of the vessel within the meaning of this section and that the interest of the majority owner was not subject to forfeiture because of the former's action. *The Calypso*, (C. C. A. 9th Cir. 1916) 230 Fed. 962, 145 C. C. A. 156, *affirming* (N. D. Cal. 1914) 217 Fed. 669.

Vol. II, p. 76, sec. 11.

Conspiracy — Indictment.—Conspiracy for a violation of this section, is not of itself a crime under the Exclusion Act; hence the acts need not be charged with the same particularity. In a charge of conspiracy to commit a crime while the particular crime must be alleged, it need not be set out with the same particularity in an indictment as a charge for the crime itself. So, an indictment for conspiracy to violate this section which alleged "did unlawfully, wilfully, knowingly, feloniously, wickedly and maliciously conspire, combine, confederate and agree together, and together with divers other persons to the grand jurors unknown" and then charged overt acts committed in furtherance of the conspiracy, was held to be sufficient. *U. S. v. Dahl*, (W. D. Wash. 1915) 225 Fed. 909, *affirmed* (C. C. A. 9th Cir. 1916) 234 Fed. 618, 148 C. C. A. 384.

In an indictment to commit an offense in violation of this section, definiteness or detail of averment is not necessary as in a charge of the offense which is the subject of the conspiracy. The outlines of the plot or concert may well be as general in the minds of the conspirators as the prohibitions of the particular statute which they conspire to violate. The means to be employed need not necessarily be set forth in the indictment, since the precise means may not have been a part of the concerted agreement or understanding. They may not have been predetermined, but left to the exigencies of the criminal enterprise as it progressed. So where an indictment expressly averred that the Chinese persons to be brought into the United States were not entitled to enter or to remain, that they were brought from Mexico and by land and that they were to be taken to Rock Springs, Wyoming, and elsewhere in this country, was held to be sufficient to inform the defendants of the crime charged, and to protect them from a second prosecution for the same offense. *Lew Moy v. U. S.*, (C. C. A. 8th Cir. 1916) 237 Fed. 50, 150 C. C. A. 252.

Evidence.—For evidence held sufficient to warrant a conviction under an indictment for conspiring to violate this section, see *Louie Ding v. U. S.*, (C. C. A. 9th Cir. 1917) 246 Fed. 80, 158 C. C. A. 306.

Effect of Immigration Act.—The offenses of bringing in, or aiding, abetting, or attempting to bring unqualified Chinese aliens into the United States, are governed by and punishable under the Chinese Exclusion Act only. The Immigration Act of Feb. 20, 1907, § 8 (title IMMIGRATION, vol. 3, p. 660), is inapplicable thereto. *Stoneberg v. Morgan*, (C. C. A. 8th Cir. 1917) 246 Fed. 98, 158 C. C. A. 324.

Vol. II, p. 82, sec. 7.

Identification — Sufficiency.—For identification of a Chinese person, charged with entering in violation of this section, held insufficient to warrant an order of deportation, see *White v. Tom Yuen*, (C. C. A. 9th Cir. 1917) 244 Fed. 739, 157 C. C. A. 187.

Vol. II, p. 86, sec. 13.

Nature of proceedings.—Proceedings in the matter of Chinese exclusion are summary; they are not to be compared with the trial of either a civil or criminal suit, nor do they resemble hearings before a committing magistrate. The statute contains no prohibition upon asking a Chinamen questions regarding his right to remain in this country at any time or place, or by any officer or official and what the statute does not forbid it is not in the interest of justice to read into the Act because it is highly conducive to ascertain the truth to find out what the Chinamen will say when suddenly asked as to his right to remain. *U. S. v. Lem You*, (S. D. N. Y. 1915) 224 Fed. 519; *U. S. v. Moy Toom*, (S. D. N. Y. 1915) 224 Fed. 520.

Hearing de novo.—The appellant has the right to have the whole case retried in another court, that is tried de novo, and disposed of there without any regard to the proceedings before the commissioner. *U. S. v. Chin Sing Quong*, (N. D. N. Y. 1915) 224 Fed. 752; *U. S. v. Chin Dong Ying*, (D. C. Mass. 1916) 229 Fed. 813.

Prior adjudication.—An adjudication by a United States commissioner in deportation proceedings that the defendant was born in the United States and the issuance to him of a certificate, establishes his right to remain in the United States and subsequent misconduct will not deprive him of the right thus acquired. *U. S. v. Lew Ah Jung*, (D. C. Mass. 1915) 224 Fed. 649.

Use of writ of habeas corpus.—The writ of habeas corpus can not be used as a substitute for the appeal provided for in

this section. *U. S. v. McCarthy*, (S. D. N. Y. 1916) 228 Fed. 398.

Change of status — Student.—Where a Chinese person came to the United States, properly certified as a student, supported by his father in China, the fact that he supported himself temporarily during a period when his father was unable to send remittances, did not operate to take him permanently out of the "student" class excepted from the operation of the Exclusion Act. *U. S. v. Lau Chu*, (C. C. A. 2d Cir. 1915) 224 Fed. 446, 140 C. C. A. 648.

Under Immigration Act.—In *Lee Wong Hin v. Mayo*, (C. C. A. 5th Cir. 1917) 240 Fed. 368, 153 C. C. A. 294, it was held that a Chinese person, being subject to deportation under the Chinese Exclusion Act could not therefore be deported under the procedure provided for under section 21 of the Immigration Act (title IMMIGRATION, vol. 3, p. 681) unless such Chinese alien was held under a warrant charging a violation of some provision of the Immigration Act.

See further the note under section 6, Act of May 5, 1892, *infra*, p. 1021.

Vol. II, p. 90, sec. 14.

Consulate attaché.—An attaché of a Chinese consulate, whose original entry into the United States was surreptitious is subject to deportation. *U. S. v. Gin Dock Sue*, (N. D. Cal. 1915) 230 Fed. 657, *affirmed* (C. C. A. 9th Cir. 1917) 245 Fed. 308, 157 C. C. A. 500.

Vol. II, p. 92, sec. 2.

Country to which deported.—The admission of Chinese descent and failure to show native born citizenship of the United States give rise to a presumption that the person is a subject of China and by virtue of the provisions of this section, when adjudged to be not lawfully entitled to remain in the United States, he must be removed to China. *Ng You Nuey v. U. S.*, (C. C. A. 6th Cir. 1915) 224 Fed. 340, 140 C. C. A. 26.

Wife of Chinese merchant.—The right of the wife of a Chinese merchant, to remain in the United States, is beyond question. *Ex parte Chan Shee*, (N. D. Cal. 1916) 236 Fed. 579.

Vol. II, p. 94, sec. 3.

Constitutionality.—A child born in the United States of Chinese parents domiciled in the United States becomes at the time of birth a citizen of the United States. It was competent for Congress, by the Chinese Exclusion Act, to empower a United States commissioner to determine the various facts upon which citizenship depends. *Louis Lit v. U. S.*, (C. C. A. 3d Cir. 1916) 238 Fed. 75, 151 C. C. A. 151.

Evidence—Admissibility of testimony of Chinese witnesses.—The testimony of Chinese witnesses is competent and admissible to establish the right of a Chinese person to be and remain in the United States. Congress has not seen fit to provide that Chinese persons found in the United States must establish their right to remain by other evidence than that of Chinese witnesses, even though it has done so as to persons seeking re-entrance on the ground they were formerly engaged as merchants in the United States, and until Congress acts and establishes a rule of evidence which excludes from consideration the testimony of Chinese persons, or requires that the fact be established by non-Chinese witnesses alone, the testimony of Chinese persons is competent and must be received and considered. *U. S. v. Chin Sing Quong*, (N. D. N. Y. 1915) 224 Fed. 752, *affirmed* (C. C. A. 2d Cir. 1916) 231 Fed. 948, 146 C. C. A. 144. See also *Louie Dai v. U. S.*, (C. C. A. 3d Cir. 1916) 238 Fed. 68, 151 C. C. A. 144; *Yee Chung v. U. S.*, (C. C. A. 9th Cir. 1917) 243 Fed. 126, 155 C. C. A. 656.

Evidence of pedigree.—The testimony of a Chinese person that according to his father's statements to him he was born in the United States, although hearsay evidence, is admissible and competent because the matter is one of pedigree or descent. *U. S. v. Lem You*, (S. D. N. Y. 1915) 224 Fed. 519.

Evidence of merchant status.—In *Louie Dai v. U. S.*, (C. C. A. 3d Cir. 1916) 238 Fed. 68, 151 C. C. A. 144, it was held that the evidence of mercantile status was not insufficient because it consisted wholly of Chinese witnesses.

Sufficiency.—For evidence held sufficient to sustain the burden of proving native-born citizenship, see *U. S. v. Chin Mun*, (D. C. Me. 1915) 225 Fed. 799.

For a case wherein the evidence was held sufficient to establish the right of a Chinese person to remain in the country and revoking an order of deportation, see *U. S. v. Jung You*, (E. D. Pa. 1916) 235 Fed. 1012.

For evidence held insufficient to support the burden of proving citizenship, see *Hoey Ay Sing v. U. S.*, (C. C. A. 3d Cir. 1915) 227 Fed. 209, 142 C. C. A. 9; *Yee Chung v. U. S.*, (C. C. A. 9th Cir. 1917) 243 Fed. 126, 155 C. C. A. 656.

Certificate of commissioner as evidence.—To the same effect as the original annotation, see *Ex parte Chin Quock Wah*, (W. D. Wash. 1915) 224 Fed. 138.

Burden and measure of proof.—To the same effect as the original annotation, see *U. S. v. Chin Sing Quong*, (N. D. N. Y. 1915) 224 Fed. 752; *U. S. v. Quan Wah*, (C. C. A. 2d Cir. 1915) 224 Fed. 420, 140 C. C. A. 114, *following U. S. v. Hom Lim*, (C. C. A. 2d Cir. 1915) 223 Fed. 520, 139 C. C. A. 68.

Assertion of citizenship.—Where a person of the Chinese race claims to be a citizen by birth of the United States, the burden of proof is upon him to sustain the claim. *Lum Kim v. U. S.*, (C. C. A. 6th Cir. 1915) 225 Fed. 31, 140 C. C. A. 357; *Ng You Nuey v. U. S.*, (C. C. A. 6th Cir. 1915) 224 Fed. 340, 140 C. C. A. 26; *Jew Lee v. U. S.*, (C. C. A. 2d Cir. 1916) 237 Fed. 1013, 151 C. C. A. 75; *Young Ti v. U. S.*, (C. C. A. 3d Cir. 1917) 246 Fed. 110, 156 C. C. A. 336.

And the assertion of a claim of domestic birth can not shift the burden upon the government of showing that the claimant was not born within the United States. *Woo Vey v. U. S.*, (C. C. A. 6th Cir. 1917) 242 Fed. 838, 155 C. C. A. 426.

If the applicant is the son of an American citizen of Chinese descent, he is also such citizen and entitled to enter as such but the burden of proving such relationship is upon the applicant. However that burden should not be increased by throwing extraneous matters into the scales against him, as for instance proof of the father's sense of allegiance to this country. *Ex parte Wong Foo*, (N. D. Cal. 1916) 230 Fed. 534. See also *Ex parte Lee Dung Moo*, (N. D. Cal. 1910) 230 Fed. 746; *Ex parte Tom Toy Tin*, (N. D. Cal. 1916) 230 Fed. 747; *Ex parte Ng Doo Wong*, (N. D. Cal. 1915) 230 Fed. 751.

Assertion of merchant status.—"The statute not only prescribes the character of probative force of the evidence necessary to be produced, but it defines who shall produce it by saying 'that any Chinese person, . . . arrested under the provisions of this act,' shall produce such evidence or be adjudged to be unlawfully within the United States. As the statute places upon Chinese persons generally the burden of proving their lawful right to be in the country, it is entirely logical that when a Chinese person relies upon his mercantile status for his right to be here, the burden is upon him to prove it. *United States v. Lung Hong*, (D. C.) 105 Fed. 188; *United States v. Lee You Wing*, 211 Fed. 939, 128 C. C. A. 437. The government may controvert that evidence in the customary way, or because of the particular burden placed upon the defendant, the government may rest and at times succeed upon his failure to produce evidence of the affirmative and satisfactory character required. Whether by his evidence the Chinese person has placed himself beyond the statute or has failed to do so, then becomes a question to be determined by the tribunal before which the case is tried." *Louie Dai v. U. S.*, (C. C. A. 3d Cir. 1916) 238 Fed. 68, 151 C. C. A. 144.

Credibility of Chinese witnesses.—Mercantile status, at the time of the passage of this Act, providing for the registration of Chinese laborers, may be established by Chinese witnesses. *Louie Dai v. U. S.*, (C. C. A. 3d Cir. 1916) 238 Fed. 68, 151 C. C. A. 144. See also *U. S. v. Chin Sing Quong*, (N. D. N. Y. 1915) 224 Fed. 752, *affirmed* (C. C. A. 2d Cir. 1916) 231 Fed. 948, 146 C. C. A. 144; *Yee Chung v. U. S.*, (C. C. A. 9th Cir. 1917) 243 Fed. 126, 155 C. C. A. 656.

In *U. S. v. Chin Sing Quong*, (N. D. N. Y. 1915) 224 Fed. 752, the court, adhering to the view expressed in the third paragraph of the original annotation, said that in determining the weight to be given the testimony of Chinese persons, the policy of Congress as declared in the Act of May 5, 1892, sec. 6 and the Act of Nov. 3, 1893, sec. 2 (vol. 2, pp. 98, 104), may be considered.

Prior adjudication.—The fact that the right of a Chinese person to remain in the United States has already been decided in his favor in previous deportation proceedings conclusively establishes his right to remain. And this right is not affected by subsequent misconduct. *U. S. v. Lew Ah Jung*, (D. C. Mass. 1915) 224 Fed. 649.

Consulate attaché.—That a Chinese person is an attaché of a Chinese consular office in the United States is not a defense where the original entry of such person into the country was surreptitious. Such status cannot cure an irregular or illegal entry into the country. *U. S. v. Gin Dock Sue*, (N. D. Cal. 1915) 230 Fed. 657, *affirmed* (C. C. A. 9th Cir. 1917) 245 Fed. 308, 157 C. C. A. 500.

Conclusiveness of findings.—The discretion exercised by the trial judge in affirming the commissioner's order of deportation should not be lightly disturbed. *Young Ti v. U. S.*, (C. C. A. 3d Cir. 1917) 246 Fed. 110, 158 C. C. A. 336.

While an appellate court should be very slow to disturb the findings of fact of the commissioner and the district court, it is beyond question that appellate courts have jurisdiction to inquire into and to reverse such findings. *Louie Dai v. U. S.*, (C. C. A. 3d Cir. 1916) 238 Fed. 68, 151 C. C. A. 144, wherein the court reversed an order of deportation on the ground that error was committed in failing to accord to testimony its natural probative force and in failing to find that it was of the force required by statute. See also *Louie Lit v. U. S.*, (C. C. A. 3d Cir. 1916) 238 Fed. 75, 151 C. C. A. 151.

Where the assignment of errors brings up the single question that the judgment is against the weight of evidence, the commissioner and the judge agreeing, the

decision on the facts will not be disturbed by an appellate court. *Lee Lew You v. U. S.*, (C. C. A. 2d Cir. 1916) 230 Fed. 820, 145 C. C. A. 130; *Chin Sing Quon v. U. S.*, (C. C. A. 2d Cir. 1916) 231 Fed. 948, 146 C. C. A. 144, *affirming* (N. D. N. Y. 1915) 224 Fed. 752; *Ng Jung v. U. S.*, (C. C. A. 2d Cir. 1916) 233 Fed. 992, 147 C. C. A. 666; *Chin Hung v. U. S.*, (C. C. A. 7th Cir. 1917) 240 Fed. 341, 153 C. C. A. 267; *Woo Vey v. U. S.*, (C. C. A. 6th Cir. 1917) 242 Fed. 838, 155 C. C. A. 426.

And the fact that no evidence was introduced by the appellant before the commissioner, and all the evidence on the hearing in the District Court was by deposition, will not render this rule, limiting the right to repeated trial of facts in cases under this statute, inapplicable. *Wong Woo v. U. S.*, (C. C. A. 5th Cir. 1917) 240 Fed. 673, 153 C. C. A. 471.

Bail.—The issuance of a writ of habeas corpus does not change the status of the relator. The writ does not disturb the custody but simply requires his production for the purpose of examining into the legality of his detention. The relator is not, in a legal sense within the United States and no power is given by the statute to the court to admit an alien by giving bail pending an appeal from a decision of the court finding that he has been accorded a fair hearing by the commissioner. *In re Chin Own*, (W. D. Wash. 1917) 242 Fed. 996.

Vol. II, p. 98, sec. 6.

Purpose of provision—Exemption of merchants.—An inquiry into the scheme of the Chinese Exclusion Act discloses what the Congress intended was the restriction of Chinese labor in this country by the exclusion of Chinese laborers; that in carrying out this purpose, the Congress recognizing treaty obligations, very carefully preserved the right of all Chinese (whether laborers or others) then lawfully in the country to remain here thereafter. Being directed against laborers as a class, the Act required every Chinese laborer to register within a certain time and procure a certificate that he was a resident of the United States at the time of the passage of the Act, and to further effectuate its purpose, the Act provided that "Any Chinese laborer . . . found within the jurisdiction of the United States without such certificate shall be deemed and adjudged to be unlawfully within the United States," and accordingly deported. There were in the country at the time Chinese of favored classes, notably merchants, who were not subjected to the requirement of registration. They were permitted to register if they chose, but were not required to do so, and were entitled to remain without registration.

Louie Dai v. U. S., (C. C. A. 3d Cir. 1916) 238 Fed. 68, 151 C. C. A. 144.

Evidence—Certificate *prima facie* proof.—The certificate is primary evidence of the right to remain in this country and the executive authorities are not justified in arbitrarily disregarding its effect. After the certificate is issued, the burden is cast upon the government, in case of attack on it, to show by testimony which the law recognizes as evidence, that it should be annulled before an order for deportation is warranted. *Wong Yee Toon v. Stump*, (C. C. A. 4th Cir. 1916) 233 Fed. 194, 147 C. C. A. 200, *reversing* (D. C. Md. 1915) 227 Fed. 247. See also *Lui Hip Chin v. Plummer*, (C. C. A. 9th Cir. 1917) 238 Fed. 763, 151 C. C. A. 613.

But where the holder of a certificate of residence leaves the United States and goes to a foreign country, he must on re-entering this country show that he has complied with the law and that his re-entry was not fraudulent. In such case the original certificate is not *prima facie* evidence of his right to remain. *Bun Chew v. Connell*, (C. C. A. 9th Cir. 1916) 233 Fed. 220, 147 C. C. A. 226.

Merchant subsequently becoming laborer.—The fact that one who has been admitted into the United States as a merchant subsequently becomes a laborer is not in itself ground for his deportation. But if one who has been admitted on certificate as a merchant immediately on his arrival proceeds to engage in and continues in employment as a laborer, that fact has a strong retroactive bearing as evidence of the intent with which he came. *Lui Hip Chin v. Plummer*, (C. C. A. 9th Cir. 1917) 238 Fed. 763, 151 C. C. A. 613; *Lew Loy v. U. S.*, (C. C. A. 6th Cir. 1917) 242 Fed. 405, 155 C. C. A. 181.

Where a Chinese person was a merchant at the time of the test of his right to remain in the country, namely the registration period, and he thereafter acquires the status of a laborer, such change of status does not work a forfeiture of his right lawfully to remain in the country. But under the circumstances of his arrest as a laborer, there devolves upon him the necessity of overcoming the natural presumption arising from his status when arrested. Being a laborer when arrested he is bound to produce a laborer's certificate or show a reason why such certificate could not or need not be produced by him. *Louis Dai v. U. S.*, (C. C. A. 3d Cir. 1916) 238 Fed. 68, 151 C. C. A. 144.

In *U. S. v. Fong Foo*, (N. D. Ia. 1916) 235 Fed. 452, it was held that where a Chinese person, under the status of a merchant, departed for China and on his return a few years later was permitted to re-enter as a merchant, but did not thereafter engage in the business of a merchant or in any other occupation than that of a laborer, his status reverted to that of a

laborer, and in the absence of a certificate of residence, as required by this section, he was subject to deportation.

Under Immigration Act.—The Department of Labor has power and authority under section 21 of the Immigration Act (title IMMIGRATION, vol. 3, p. 681), to determine the right of a Chinese person, charged with being in the United States. *Ex parte Lee Ying*, (W. D. N. Y. 1915) 225 Fed. 335; *Ex parte Woo Shing*, (N. D. Ohio 1915) 226 Fed. 141; *Sibray v. U. S.*, (C. C. A. 3d Cir. 1915) 227 Fed. 1, 141 C. C. A. 555; *Ex parte Chin Him*, (W. D. N. Y. 1915) 227 Fed. 131; *U. S. v. Prentis*, (N. D. Ill. 1916) 230 Fed. 935; *Wong Chung v. U. S.*, (C. C. A. 9th Cir. 1917) 244 Fed. 410, 157 C. C. A. 36. But see the note under section 13 of the Act of Sept. 13, 1888, *supra*, p. 1019.

Vol. II, p. 104, sec. 2.

Chinese merchants—Partnership or firm.—To the same effect as the original annotation, see *U. S. v. Chin Sing Quong*, (N. D. N. Y. 1915) 224 Fed. 752, wherein the court said: "It has been decided that membership in a firm is all sufficiently proved if the name appears in the books of such firm and shows that the defendant was a member thereof."

Conducting factory.—One engaged solely in conducting a factory for the manufacture of materials furnished by others is not a merchant; but if, in addition to the work of a factory, he buys and sells goods, he is a merchant. *Ong Chew Lung v. Burnett*, (C. C. A. 9th Cir. 1916) 232 Fed. 853, 147 C. C. A. 47.

Adopted children of merchant.—To the same effect as the original annotation, see *U. S. v. Lee Chee*, (C. C. A. 2d Cir. 1915) 224 Fed. 447, 140 C. C. A. 649, wherein the court held further that the circumstance that later on an adopted child became a laborer would be no ground for his deportation.

Nephew of merchant.—A Chinese boy, coming to this country with his uncle and under his charge and protection should be given the status of the uncle; and being entitled to such status it would be lawful for him to enter the United States without a certificate, providing the person with whom he came was of the merchant class. *U. S. v. Jew Sung Qwong*, (D. C. Ore. 1916) 232 Fed. 279.

Chinese laborer.—The words "Chinese laborers" as used in the Exclusion Act were intended to designate all immigration to the United States from China other than that of privileged classes. *U. S. v. Jew Sung Qwong*, (D. C. Ore. 1916) 232 Fed. 279.

Change of status—Student.—The fact that a Chinese person, properly admitted as a student, was compelled to labor in order to support himself temporarily until

he could secure remittances from China, did not operate to take him permanently out of the "student" class excepted from the operation of the Exclusion Act. *U. S. v. Lau Chu*, (C. C. A. 2d Cir. 1915) 224 Fed. 446, 140 C. C. A. 648.

Evidence.—For an extensive review of evidence held insufficient to show that a Chinese person resisting deportation was ever a merchant in the United States, as defined in this section, see *U. S. v. Chin Sing Quong*, (N. D. N. Y. 1915) 224 Fed. 752.

Vol. II, p. 110, sec. 2.

Authority of Secretary of Commerce and Labor to make rules.—Under this section the Secretary of Commerce and Labor had authority to adopt rule 7 of the regulations governing the admission of Chinese, exacting a bond for the granting of shore leave to Chinese sailors. *U. S. v. Vaccaro*, (E. D. La. 1916) 230 Fed. 943.

Vol. II, p. 113, sec. 4.

Deportation — Power of collector of customs.—The insular collector of customs had authority to appoint a board of examiners primarily to determine, subject to his review, the right to enter under the Chinese exclusion laws. *Sui v. McCoy*, (1915) 239 U. S. 139, 36 S. Ct. 95, 60 U. S. (L. ed.) 183, *affirming* 22 Phil. Island, 361.

Board of examiners.—There is no conflict between the Act of Congress extending the Chinese exclusion laws to the Philippine Islands and the action of a collector in selecting a board of examiners to determine the right to enter, in whom the power had been already lodged to act under the supervision of the collector concerning matters of immigration. *Sui v. McCoy*, (1915) 239 U. S. 139, 36 S. Ct. 95, 60 U. S. (L. ed.) 183, *affirming* 22 Phil. Island. 361.

CITIZENSHIP

Vol. II, p. 116, sec. 1993.

Children born abroad.—Where a native of China seeks admission as the son of a native-born citizen, the question of relationship should be fairly investigated with a view to ascertain the truth and with a perfect willingness to admit him as a citizen under this law, instead of being investigated in a spirit hostile to the law, which, lacking the power to repeal, accomplishes the same result by denying to it effect. *Ex parte Lee Dung Moo*, (N. D. Cal. 1916) 230 Fed. 746; *Ex parte Tom Toy Tin*, (N. D. Cal. 1916) 230 Fed. 747.

A native of China, who claims admission as the son of a native-born citizen, should not be denied admission solely on the ground that his application was not made until some years after he reached majority. *Ex parte Tom Toy Tin*, (N. D. Cal. 1916) 230 Fed. 747; *Ex parte Ng Doo Wong*, (N. D. Cal. 1915) 230 Fed. 751.

Vol. II, p. 122, sec. 2.

To whom applicable.—In *U. S. v. Howe*, (S. D. N. Y. 1916) 231 Fed. 546, it appeared that a naturalized citizen returned to his native country, where he had left his family, and resided there for nearly ten years, during which time he took no steps to register himself as an American citizen with any diplomatic or consular officer. On his return to America his right to enter was questioned by the immigration authorities on the ground that he was an undesirable alien. On petition

for habeas corpus, it was held that under this section the relator had lost his citizenship by his continuous residence abroad, that the Act applied to a naturalized citizen, and was constitutional and valid as to him, although it was not passed until after he left the United States. This decision was, however, partly based on a provision of a treaty between the United States and Sweden, that if a naturalized Swede or Norwegian, who has become a naturalized citizen of the United States, renews his residence in his native country without the intent of returning to America, he is to be held by the United States as having renounced his American citizenship.

However, in *Stein v. Fleischmann Co.*, (S. D. N. Y. 1916) 237 Fed. 679, it was held, in view of a treaty between the United States and Austria, providing that an emigrant should not forfeit his citizenship by returning to his original country, unless he shall, of his own accord, reacquire his former citizenship and renounce that obtained by naturalization, that an Austrian could not sue as an alien in the federal courts, notwithstanding the fact that he had resided in Austria for more than two years and had taken no steps to retain his American citizenship.

Enlistment in foreign army.—One who moves to another country, and enlists in a foreign army, taking the oath of allegiance to the sovereign of the foreign state, and actually enters service, thereby effectually expatriates himself under this section.

CIVIL RIGHTS

Vol. II, p. 132, sec. 1980.

Evidence.—For evidence sufficient to sustain a connection for violation of this section by conspiring to prevent colored persons from voting on account of their race and color, see *Guinn v. U. S.*, (C. C. A. 8th Cir. 1915) 228 Fed. 103, 142 C. C. A. 509.

Vol. II, p. 137, sec. 1990.

Punishment for failure to perform service.—In holding invalid a state statute making it a misdemeanor punishable by fine or imprisonment to fail or refuse without just causes to perform labor or services under a contract, or to fail or refuse to pay for money or other advances received by virtue of the contract, the court, in *Goode v. Nelson*, (Fla. 1917) 74 So. 17, said that, as "involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted," is forbidden "within the

United States" by the federal Constitution, a crime to be punished by imprisonment cannot lawfully be predicated upon the breach of a promise to perform labor or service. And as "all . . . laws . . . of any . . . state . . . which . . . shall . . . be made to . . . enforce, directly or indirectly, the voluntary or involuntary service or labor of any persons as peons, in liquidation of any debt or obligation, or otherwise, are declared null and void," a state statute making the failure or refusal, without just cause, to perform labor or service pursuant to a promise, a criminal offense, is "null and void," as its effect is to enforce, "directly or indirectly, the voluntary or involuntary service or labor of . . . persons as peons, in liquidation of any debt or obligation," in violation of the federal statutes, which, with Amendment Thirteenth of the federal Constitution, comprises the supreme law of the land on the subject.

CIVIL SERVICE

vol. II, p. 168, sec. 1.

Construction.—The words "any matter depending before the Civil Service Commission" as used in this section are not restricted to matters involving formal hearings, but apply to an application for a position in the civil service of the United States, and one who knowingly makes false statements in his sworn application is guilty of perjury. *U. S. v. Crandol*, (E. D. Va. 1916) 233 Fed. 331.

Vol. II, p. 169, sec. 1.

Constitutionality.—It was competent for Congress to exempt the marshal's office from the provisions of all laws relating to civil service and to subject the deputies to the terms of the exempting

enactment. *U. S. v. Lapp*, (C. C. A. 6th Cir. 1917) 244 Fed. 377, 157 C. C. A. 3.

Construction.—The fact that this provision was a rider in an appropriation bill cannot effect its construction. *U. S. v. Lapp*, (C. C. A. 6th Cir. 1917) 244 Fed. 377, 157 C. C. A. 3.

Removal from office.—Under this provision a United States marshal may remove a deputy marshal at his discretion, and may not be controlled by mandamus. So much of the Act of Aug. 24, 1912, ch. 389, § 6 (see *PUBLIC OFFICERS AND EMPLOYEES*, vol. 8, p. 956), providing for the removal of persons from the classified civil service, as is inconsistent with this section, must yield so far as the appointment of deputy marshals is concerned. *U. S. v. Lapp*, (C. C. A. 6th Cir. 1917) 244 Fed. 377, 157 C. C. A. 3.

CLAIMS

Vol. II, p. 179, sec. 3477.

Compliance with statute essential.—An assignment which does not comply absolutely with this section, is void as between the assignor and assignee, as well as between all other parties. *Manhattan Commercial Co. v. Paul*, (1916) 216 N.

Y. 481, 111 N. E. 76, *overruling* *York v. Conde*, (1895) 147 N. Y. 486, 42 N. E. 193.

Lien.—Since the purpose of this section is to protect the government and not the interests of the parties, an equitable lien, created by assignment, on moneys

accruing under a contract with the United States is not invalid. *Jennings v. Whitney*, (1916) 224 Mass. 138, 112 N. E. 655.

Vol. II, p. 197, sec. 3482.

Operation of statute.—This section was intended to provide for losses to those engaged in military service in time of war. It was amended by the Act of June 22, 1874, ch. 395, but that Act was temporary legislation only intended to effect the consideration of a specific class of claims theretofore existing, if and when presented within the time limit prescribed by the Act and when the Act expired by its own limitation this section remained in force unaffected thereby. *Griffis v. U. S.* (1917) 52 Ct. Cl. 170, *modifying* (1916) 52 Ct. Cl. 1.

Vol. II, p. 205. [*Act of March 3, 1885*]

"Private property" defined.—The term private property as used in this Act includes all articles, carried by the persons enumerated into the military service, which were indispensable to the conditions of that service and comprehends privately owned horses inasmuch as they are not specifically excluded by the terms of the Act. *Andrews v. U. S.*, (1917) 52 Ct. Cl. 373.

Property in military service.—This act is expressly limited to times of peace, but the term "in the military service" has a universally accepted legal meaning and Congress clearly did not intend to make the Government an insurer of privately owned property while in the military service, but limited liability to the loss and destruction of such property directly caused by military service and in nowise attributable to the fault or negligence of the soldier. *Andrews v. U. S.*, (1917) 52 Ct. Cl. 373.

"In time of war" in proviso.—A loss occurring May 16, 1899, of private property aboard a transport bound from Porto Rico to New York which was wrecked, though the troops aboard were destined for service in the Philippines after refitting in New York was not "in time of war" within the meaning of this Act. *Newcomber v. U. S.* (1916) 51 Ct. Cl. 408.

Presentation of claim.—Claims under this Act must have been presented to the "proper accounting officer" within two years from the occurrence of the loss. *Griffis v. U. S.*, (1917) 52 Ct. Cl. 170, *modifying* (1916) 52 Ct. Cl. 1; *Goodman v. U. S.*, (1917) 52 Ct. Cl. 244. See also *Andrews v. U. S.*, (1917) 52 Ct. Cl. 373.

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Presentation of claims under this Act to the Quartermaster General is not a presentation to "the proper accounting officer." *Griffis v. U. S.*, (1917) 52 Ct. Cl. 170, *modifying* (1916) 52 Ct. Cl. 1.

The requirement of presentation within two years to the accounting officers is a condition precedent to the right of action. *Newcomber v. U. S.*, (1916) 51 Ct. Cl. 408.

Jurisdiction of Court of Claims.—By virtue of its general jurisdiction of claims "founded upon . . . any law of congress" given in Judicial Code, sec. 145, vol. V. p. 649 the Court of Claims has jurisdiction of claims arising under this Act where (1) the facts are undisputed and the accounting officers misapply the law, or (2) they refuse to act on claims properly presented, or (3) payment by the Treasury of their award is refused. *Newcomber v. U. S.* (1916) 51 Ct. Cl. 408.

Vol. II, p. 216, sec. 3466.

Priority.—Where a nonresident contractor failed to complete a building which he had undertaken to construct for the government, and his property was attached in the state court by the bank which had advanced him money, the surety on the contractor's bond replevied it, completed the building and claimed subrogation to any claim of the government. It was held that even if the words "absent debtor" as used in this section could be construed to mean a nonresident, yet the government had no priority to which the surety could be subrogated, since the attachment did not operate as a sequestration of the property for distribution among the creditors. *People's Nat. Bank v. Corse*, (1915) 133 Tenn. 720, 182 S. W. 917.

Priority as creating lien.—This section and R. S. sec. 3468 do not create a lien on the debtor's property as such. *People's Nat. Bank v. Corse*, (1915) 133 Tenn. 720, 182 S. W. 917.

Vol. II, p. 235, sec. 3.

Amendment of petition.—Where in a claim under this Act it appears that two separate depredations were committed, one by the Cheyennes and the other by the Sioux, and where the Cheyennes alone were named as the Indian defendants therein, it is not allowable to make a change of parties by an amendment to the original petition, so as to make the Sioux joint defendants, and the plaintiff is furnished no relief by the amendment of the first section of this Act by the Act of Jan. 11, 1915, ch. 7. *Coffield v. U. S.*, (1916) 52 Ct. Cl. 17.

COINAGE, MINTS AND ASSAY OFFICES

Vol. II, p. 328, sec. 3504.

Power of removal by superintendent.—The power of appointment of workmen was, prior to the passage of the Act of Aug. 23, 1912, ch. 350, § 1 (vol. 2, p. 333), vested in the superintendent of the mint and his appointments were valid unless disapproved by the director, and in the absence of a statutory provision relating to the removal of workmen appointed by the superintendent, that power is incident to the power to appoint. *Costello v. U. S.*, (1916) 51 Ct. Cl. 257.

Vol. II, p. 333, sec. 1.

Power of superintendent.—This Act took effect from the date of its passage, and the power of a superintendent of a mint to remove a workman prior to that date was not affected by the date mentioned in the statute from which the Secretary of the Treasury should control. *Costello v. U. S.*, (1916) 51 Ct. Cl. 257.

COLLISIONS

Vol. II, p. 379, art. 5.

Obstruction of lights.—A schooner is guilty of fault in so carrying her green light that it was screened by her sails from the approaching steamer. *The Brand*, (C. C. A. 3d Cir. 1915) 224 Fed. 391, 140 C. C. A. 77, Ann. Cas. 1917B 996, *affirming* (E. D. Pa. 1914) 214 Fed. 266.

Vol. II, p. 389, art. 16.

Rule absolute.—Under this article when a vessel is proceeding in a fog and a whistle is heard apparently forward of her beam, the position of which is not ascertained, the duty to stop the engines, if the circumstances will permit, is imperative. *Lie v. San Francisco, etc., Steamship Co.*, (1917) 243 U. S. 291, 37 S. Ct. 270, 61 U. S. (L. ed.) 726, *affirming* (C. C. A. 9th Cir. 1915), 219 Fed. 134, 135 C. C. A. 32.

Violation of rule.—Where it appeared that steamer and a tug approaching each other, both sounding fog signals, and the steamer on hearing a whistle ahead, stopped for a minute, and hearing no response to the whistle she gave, was started forward, but her engine was almost immediately reversed on hearing another signal, it was held that she was in fault for violating this article. *The Tillicum*, (C. C. A. 9th Cir. 1916) 230 Fed. 415, 144 C. C. A. 557.

Vol. II, p. 415, sec. 1.

Definition—Steam vessel.—A collision between a steam vessel and a schooner whose sails were furled and which was being propelled by a gasoline motor alone, is a collision between two "steam vessels" within the meaning of this preliminary

article. *The Machigonne*, (C. C. A. 1st Cir. 1916) 230 Fed. 777, 145 C. C. A. 87.

Vol. II, p. 419, art. 11.

Position of lights.—Where it is shown that the lights on a vessel at anchor were clearly visible, and in proper position, except that the stern light was not more than 10 feet lower than the forward light instead of 15 feet as required by this article, that fact alone is not sufficient to charge her with fault for collision with a vessel in motion. *The John G. McCullough*, (C. C. A. 4th Cir. 1916) 239 Fed. 111, 152 C. C. A. 153.

Vol. II, p. 421, art. 16.

Moderate speed.—A sailing vessel proceeding with all sails set and drawing in a dense fog is going faster than necessary to maintain steerageway, is not going at the "moderate speed" required by the article, and is at fault for steaming at an excessive speed. *The Robert M. Thompson*, (C. C. A. 2d Cir. 1917) 244 Fed. 662, 157 C. C. A. 110.

Mutual fault.—Where it appeared that a steamship and a pilot boat collided in a fog which rendered each invisible to the other until within a distance of 500 feet, it was held that both were in fault for proceeding at an excessive speed after each heard the fog signals of the other. *The Manchioneal*, (C. C. A. 2d Cir. 1917) 243 Fed. 801, 156 C. C. A. 313.

Presumption and burden of proof.—The failure to observe this rule creates a presumption of fault and casts upon the vessel at fault the burden of proof to show even contributing fault in the other vessel. *The Easton*, (C. C. A. 2d Cir. 1917) 239 Fed. 859, 152 C. C. A. 643.

Sailing vessel.—This article applies to sailing vessels as well as steam vessels. *The Oceania Vance*, (C. C. A. 9th Cir. 1916) 223 Fed. 77, 146 C. C. A. 147.

Vol. II, p. 423, art. 18, rule I.

Burden of proof.—A departure from this puts on the boat attempting to justify it, the burden of establishing that the other boat assented by proper signals to the departure. *The Mercer*, (C. C. A. 2d Cir. 1916) 234 Fed. 259, 148 C. C. A. 161.

Vol. II, p. 426, art. 18, rule V.

Signal given at time too far past.—This rule was considered in *The Daniel Willard*, (C. C. A. 2d Cir. 1916) 235 Fed. 112, 148 C. C. A. 606, wherein it appeared that a steamer in leaving her pier passed out into the river on the north side of a long pier which completely shut off her view from the south and it was held that because of her failure to go at moderate speed or to give warning to other vessels after having given her slip signal, when leaving her own pier, about 1300 feet from the head of the long pier, she negligently violated this rule and was in fault for a collision with another vessel which was approaching from the south.

Vol. II, p. 427, art. 18, rule VIII.

Violation of rule.—In *The James L. Morgan*, (C. C. A. 2d Cir. 1915) 225 Fed. 34, 140 C. C. A. 360, it appeared that a steam lighter was passing down a river, and desiring to pass to the starboard side of a ferryboat, gave a one blast signal but was answered by a two blast signal. The steamer continued, and about the same time the ferryboat changed her course to cross ahead of the steamer, which then went to starboard and came into collision with a tug which was also passing down. It was held that the steam lighter and ferryboat were both in fault for violation of this rule.

Vol. II, p. 427, art. 18, rule IX.

Construction of rule.—The signals prescribed by this rule are only for vessels meeting, passing, and overtaking and do not relieve the vessel from the duty to give the signals prescribed by rule III. *The Virginian*, (C. C. A. 9th Cir. 1916) 238 Fed. 156, 151 C. C. A. 232.

Vol. II, p. 436, art. 25.

Rule not inflexible.—This is not an inflexible rule but is to be construed in connection with rule 27 and is to be followed

only "when safe and practicable;" and, where it is manifest that adherence to it will produce disaster, it is not only the right, but the duty, of the navigator to disregard it. *The Santa Maria*, (D. C. Del. 1915) 227 Fed. 149. See also *The P. R. R. No. 32*, (C. C. A. 2d Cir. 1917) 240 Fed. 118, 153 C. C. A. 154.

Rights of moving vessels.—This article is a rule of the road defining the respective rights of moving vessels in narrow channels, and as against a vessel not proceeding but wrongfully lying at anchor, there the right of a traveling vessel is superior in any part of the channel. *The Belfast*, (D. C. Mass. 1914) 226 Fed. 362.

East river.—The East river is not a "narrow channel" within the meaning of this article. *The Wrestler*, (C. C. A. 2d Cir. 1916) 232 Fed. 448, 146 C. C. A. 442.

President Roads.—President Roads and its approaches in Boston Harbor are to be regarded, generally speaking as a "narrow channel" within the meaning of this article. *The Vera*, (D. C. Mass. 1914) 224 Fed. 998, affirmed (C. C. A. 1st Cir. 1915) 226 Fed. 369, 141 C. C. A. 199.

Vol. II, p. 440, art. 27.

Special circumstances.—The steering and sailing rules apply to vessels navigating on steady courses. Where one of them is maneuvering merely, as for instance to get into or out of a dock, or winding around to get on her course, the situation is one of special circumstances, within the meaning of this article. *The John Rugge*, (C. C. A. 2d Cir. 1916) 234 Fed. 861, 148 C. C. A. 459.

In *The William A. Jamison*, (C. C. A. 2d Cir. 1917) 241 Fed. 950, 154 C. C. A. 586, it appeared that a tug was navigating near the ends of piers, while another tug was bringing barges to make up its tow, and it was held that the case was one of special circumstances within the meaning of this article. To the same effect see *The Washington*, (C. C. A. 2d Cir. 1917) 241 Fed. 952, 154 C. C. A. 588.

Vol. II, p. 465, sec. 4233, rule 22.

Duty of overtaking vessel.—Under this rule the overtaking vessel has the right to overtake and pass another if it can do so with safety to both; it must be its own judge of safety and assumes all risks except those due to the fault of the vessel overtaken, and a reply of the latter to a passing signal of an overtaking vessel is no more than an assent by it to what the overtaking vessel proposes to do at its own risk. *Atlas Transp. Co. v. Lee Line Steamers*, (C. C. A. 8th Cir. 1916) 235 Fed. 492, 149 C. C. A. 38.

COMMERCE DEPARTMENT

Vol. II, p. 481, sec. 10.

Authority of Secretary.—The transfer made by this Act does not give to the Secretary of Commerce any greater power or authority with respect of the subjects mentioned in this section, than that previously conferred on the Secretary of the Treasury. The practice of the Department

with respect of the remission or mitigation of fines, penalties or forfeitures is the same as that previously exercised by the Secretary of the Treasury under the advice of the Attorney General. *Findlay v. U. S.*, (C. C. A. 9th Cir. 1915) 225 Fed. 337, 139 C. C. A. 207.

CONGRESS

Vol. II, p. 502 [*Act of Aug. 8, 1911*]

Effect on referendum of state act.—There is nothing in this Act preventing the people of a state from reserving the right to approve or disapprove by referendum a state Act redistricting the state for the purpose of congressional elections. *Davis v. Hildebrant*, (1916) 241 U. S. 565, 36 S. Ct. 708, 60 U. S. (L. ed.) 1172, *affirming* (1916) 94 Ohio St. 154, 114 N. E. 55, wherein it was said that Congress, in enacting the controlling law concerning the duties of the states through their legislative authority to deal with the subject of the creation of congressional districts expressly modified the phraseology of the previous Acts relating to that subject by inserting a clause plainly intended to provide that where, by the state constitution and laws, the referen-

dum was treated as a part of the legislative power, the power thus constituted should be held and treated to be the state legislative power for the purpose of creating congressional districts by law. This is the case since under the Act relating to apportionment which was superseded by this Act it was commanded that the existing districts in a state should continue in force "until the legislature of such state in the manner herein prescribed shall redistrict such state" while in this Act there was substituted a provision that the redistricting shall be made by a state "in the manner provided by the laws thereof" and the legislative history of this Act leaves no room for doubt that the prior words were stricken out and the new words inserted for the express purpose, in so far as Congress had power to do it, of excluding the possibility that it would effect a referendum.

COPYRIGHT

Vol. II, p. 547, sec 1(b).

Right to novelize play.—The right to novelize a play was created by this section. Under the old copyright statute the right to novelize a play in such form as did not result in a "copy" was a right in the public domain and inhered in the first novelizer whether he were the author of the play, or another. *Fitch v. Young*, (S. D. N. Y. 1911) 230 Fed. 743.

Right of dramatization.—An exclusive right to dramatize a novel "for presentation on the stage" was held to mean an exclusive right to dramatize a spoken play and did not comprehend the independent right to dramatize the novel for a moving picture play. *Klein v. Beach*, (S. D. N. Y. 1916) 232 Fed. 240, *affirmed*

(C. C. A. 2d Cir. 1917) 239 Fed. 108, 151 C. C. A. 282.

Photo-play presentation.—The copyright of a dramatization covers a photo-play presentation of the same subject. *U. S. v. Motion Picture Patents Co.*, (E. D. Pa. 1915) 225 Fed. 800.

Vol. II, p. 548, sec. 1(d).

Playright distinguished from copyright.—Under the old copyright statute the distinction between playright and copyright was recognized although printed publication would forfeit both and one statutory copyright would protect both. So, the author of a play could reserve his common-law playright from the assignment of the play, and the assignee

could, by the necessary formalities on the printed play, create a statutory copyright held beneficially by the assignee. *Fitch v. Young*, (S. D. N. Y. 1911) 230 Fed. 743.

Vol. II, p. 548, sec. 1(e).

"Performance for profits."—The performance of a copyrighted musical composition in the dining room of a hotel or restaurant, open to guests without charge for admission to hear it, infringes the exclusive right of the owner of the copyright to perform the work publicly for profit. "If the rights under the copyright are infringed only by a performance where money is taken at the door they are very imperfectly protected. Performances not different in kind from those of the defendants could be given that might compete with and even destroy the success of the monopoly that the law intends the plaintiffs to have. It is enough to say that there is no need to construe the statute so narrowly." *Herbert v. Shanley Co.*, (1917) 242 U. S. 591, 37 S. Ct. 32, 61 U. S. (L. ed.) 511, *reversing* (C. C. A. 1915) 221 Fed. 229, 136 C. C. A. 639, (C. C. A. 2d Cir. 1916) 229 Fed. 340, 143 C. C. A. 460, cited in the original note.

Construing this phrase in *Hubbell v. Royal Pastime Amusement Co.*, (S. D. N. Y. 1917) 242 Fed. 1002, the court said: "I am entirely satisfied that a semicolon should precede the words 'and for the purpose of public performance for profit.' This is born out by a reading of the committee reports and a reading of the statute. [See article STATUTES AND STATUTORY CONSTRUCTION, Vol. 1, par. 50, p. 70, as to the rules of construction where punctuation is involved.] If the semicolon is not inserted at the place above indicated, subdivision 'e' of section 1 does not seem to make sense. Eliminating the semicolon, the most, however, that the section amounts to is a protection in favor of those persons who do not perform publicly for profit the musical composition—as in the case of street parades, school, educational, or similar public occasions and exhibitions."

Musical composition.—A musical composition would seem, in connection with section 3, providing for the protection of all copyrightable component parts of the work copyrighted, to include both words and music. *Standard Music Roll Co. v. Mills*, (C. C. A. 3d Cir. 1917) 241 Fed. 360, 154 C. C. A. 240, *affirming* (D. C. N. J. 1915) 223 Fed. 849.

Failure to file notice as defense.—"In order to compel the owner to make the license public by filing a notice in the office at Washington, the statute provides as a penalty that failure to file shall be a 'complete defense to any suit, action, or proceeding for any infringement of

such copyright.' What does 'such copyright' refer to? Manifestly, as we think, some particular right to reproduce the musical work mechanically. Just how the reproduction is to be made, and whether it is to be confined to the music or shall extend to the words also, is in the first instance left for the owner to determine. But after he has determined it, and has granted a license to one person, he thereby opens the field to all others to do the same, or a similar, thing. If he license one person to reproduce both words and music by the phonograph method, other persons may reproduce them both by using phonography. If he license one person to reproduce the music by the automatic roll, others also may use the roll, but they do not thereby acquire the right to print the words. In brief, 'such copyright' means the particular right covering mechanical reproduction that happens to be in controversy—in the present case, the right to reproduce, not the words but the music, mechanically." *Standard Music Roll Co. v. Mills*, (C. C. A. 3d Cir. 1917) 241 Fed. 360, 154 C. C. A. 240, *affirming* (D. C. N. J. 1915) 223 Fed. 849.

Object of proviso.—The object of the proviso in this section seems to be the prevention of monopoly or favoritism in granting the right to reproduce a musical work mechanically. If the owner authorize one person to reproduce the work mechanically, other persons also may reproduce it in a similar mechanical manner, subject to the payment of the statutory royalty. *Standard Music Roll Co. v. Mills*, (C. C. A. 3d Cir. 1917) 241 Fed. 360, 154 C. C. A. 240, *affirming* (D. C. N. J. 1915) 223 Fed. 849.

Vol. II, p. 553, sec. 5.

What may be copyrighted.—An English translation of an original French play, with such modification as the translator's ingenuity might suggest, is copyrightable. But such translator has no right to transfer into his adaptation variations from and additions to the French play which were original with a prior translator who copyrighted his translation. *Stevenson v. Fox*, (S. D. N. Y. 1915) 226 Fed. 990.

Photo-play presentation.—The copyright of a dramatization covers a photo-play presentation of the same subject. *U. S. v. Motion Picture Patents Co.*, (E. D. Pa. 1915) 225 Fed. 800.

A manual of instruction, illustrating, by designs and explanatory matter, the uses of a complicated mechanical toy, is copyrightable. *Meccano v. Wagner*, (S. D. Ohio 1916) 234 Fed. 912.

A photograph of a street scene is copyrightable when the result evidences originality in bringing out the proper setting for both animate and inanimate objects.

with the adjunctive features of light, shade, position, etc. *Pagano v. Beseler Co.*, (S. D. N. Y. 1916) 234 Fed. 963.

Chromos are copyrightable and it makes no difference that they are intended for advertising articles of commerce. *Stecher Lithographic Co. v. Dunston Lithograph Co.*, (W. D. N. Y. 1916) 233 Fed. 601.

What cannot be copyrighted.—Title or name.—"It is well settled that the owner of the thing copyrighted acquires through the copyright no property in the name by which it is designated. 'Neither the author nor proprietor of a literary work has any property in its name. It is term of description, which serves to identify the work; but any other person can with impunity adopt it, and apply it to any other book, or to any trade commodity, provided he does not use it as a false token, to induce the public to believe that the thing to which it is applied is the identical thing which it originally designated. If literary property could be protected upon the theory that the name by which it is christened is equivalent to a trademark, there would be no necessity for copyright law.'" *Wilson v. Hecht*, (1916) 44 App. Cas. (D. C.) 33.

A plan of medical instruction illustrating practice in general use and embodying previous medical knowledge which was common property to any writer, is not copyrightable. *Chautauqua School of Nursing v. National School of Nursing*, (C. C. A. 2d Cir. 1916) 238 Fed. 151, 151 C. C. A. 227, *reversing* (W. D. N. Y. 1914) 211 Fed. 1014.

"Statue."—If a production is intended for or bound to be given free and unrestricted public exhibition, and is so displayed, there is a publication of the thing and dedication to the public, defeating copyright. Such display inevitably exposes the production to copy and so is inconsistent with claim of copyright and the latter cannot be preserved by any notice thereof hung upon the exhibit. A statue or structure built for public free exhibition can no more be copyrighted than *Liberty Enlightening the World*, or the *Dewey Arch* or the *Washington Monument*. *Carns v. Keefe*, (D. C. Mont. 1917) 242 Fed. 745.

Vol. II, p. 562, sec. 8.

Question of ownership of copyright.—The legal title to a copyright vests in the person in whose name the copyright is taken out. It may, however, be held by him in trust for the true owner, and the question of true ownership is one of fact, dependent upon the circumstances of the case. *Harms v. Stern*, (C. C. A. 2d Cir. 1916) 229 Fed. 42, 145 C. C. A. 2.

Vol. II, p. 574, sec. 18.

Notice.—Legality of name.—The proprietor of a copyright may use either his real name or an assumed name on his notice of copyright but the name must be legal where he uses it. So where a state statute (N. Y.) prohibits the use of a fictitious partnership name, and the copyright proprietor, instead of his own name, used that of a company of which he was not a member and which in fact did not exist, it was held that a suit for infringement would not lie under the notice of copyright in that form. *Haas v. Feist*, (S. D. N. Y. 1916) 234 Fed. 105.

Vol. II, p. 579, sec. 20.

Effect of defective notice.—Where in a notice of copyright, the letter C enclosed in a circle as required by section 18, and affixed to a published illustration, was so defective as not to convey to any one the existence of a copyright, it was held, although there had been a technical and incidental infringement, that by reason of the improper and defective notice, no damage would be awarded against the infringers, but they would be enjoined only from the future use of the copyrighted illustration. *Alfred Decker Cohn Co. v. Etchison Hat Co.*, (E. D. Va. 1915) 225 Fed. 135.

Application of section.—For a case held to be within the application of this section, see *Stecher Lithographic Co. v. Dunston Lithograph Co.*, (W. D. N. Y. 1916) 233 Fed. 601, holding a certain number of copyrighted *chromos* infringed although they were published without the copyright mark.

Vol. II, p. 581, sec. 25 (b).

Purpose of section.—The language of this section is a growth of years, resulting from the efforts of Congress to avoid that strictness of construction which historically attached to any statute inflicting penalties and to confer upon an injured copyright owner some pecuniary solace even when the rules of law render it difficult, if not impossible, as it often is, to prove damages or discover profits. *S. E. Hendricks Co. v. Thomas Pub. Co.*, (C. C. A. 2d Cir. 1917) 242 Fed. 37, 154 C. C. A. 629.

Consolidation of suits.—Where one copyrights separately ten cuts, and finds each one of the ten infringed on separate days by the same newspaper, and then brings ten separate damage suits, on application to compel consolidation, the court would look into the facts and ascertain whether there were really ten controversies involving ten questions or whether there was just the one dispute involving one question, and probably would consolidate or not, according as it

decided this question. If these suits were consolidated upon a finding that they were really only one controversy and injury to the plaintiff's business, or if the plaintiff in the first place brought one consolidated suit, minimum damages as for one infringement would satisfy the statute. *L. A. Westermann Co. v. Dispatch Printing Co.*, (C. C. A. 6th Cir. 1916) 233 Fed. 609, 147 C. C. A. 417.

Joint tortfeasors.—All parties who unite in an infringement are, under the statute, liable for the damages sustained by the owner of the copyright. *Gross v. Van Dyk Gravure Co.*, (C. C. A. 2d Cir. 1916) 230 Fed. 412, 144 C. C. A. 554. See also *Haas v. Feis*, (S. D. N. Y. 1916) 234 Fed. 105.

Quantum of damages.—The maximum and minimum limitations unquestionably apply to the "in lieu" of damages. Whether they apply to the actual damages which may be proved and established, under the first part of this section, was mooted, but passed over, as not requiring decision in *L. A. Westermann Co. v. Dispatch Printing Co.*, (C. C. A. 6th Cir. 1916) 233 Fed. 609, 147 C. C. A. 417.

In consolidated suits.—On a consolidated suit the statute may be satisfied by awarding the minimum damages as for one infringement. *L. A. Westermann Co. v. Dispatch Printing Co.*, (C. C. A. 6th Cir. 1916) 233 Fed. 609, 147 C. C. A. 417.

Infringement under minimum damage clause.—"What did Congress mean when it referred to the 'infringement' for which not less than \$250 must be paid? The common instance, such as Congress probably had in mind, is clear. In case of an unauthorized publication of a copyrighted book, or an infringing edition of a copyrighted song, there are clearly one right and one violation, though an infringing edition may contain many copies. The statute had recognized that in some instances acts of infringement, though connected and united, may require separate treatment, and in other instances (newspaper reproduction of photographs) a number, perhaps a vast number, of acts are treated collectively as one infringement; but in still other instances the statute is wholly silent in these respects. The publishing of an edition of a thousand books is an infringement; so is the putting on sale of one of them. Using the analogy of the patent law, the manufacture and sale of one article is an infringement sufficient to support an action; yet all the conduct of the defendant in continuing the manufacture and sale over a period of years may be 'the infringement' for which damages will be assessed at the end of the action. There is no corresponding damage statute in the patent law to make the analogy complete; but can it be supposed that the copyright proprietor

can take each infringing act out of a series or group, because each one is sufficient to support an action, and then plant a separate action or complaint upon each, and so recover his minimum damages practically as many times as he chooses? These and other considerations convince us that the 'infringement' which calls for minimum damages is that conduct of the defendant, whether being one act or many, which constitutes a connected and fairly unitary invasion of the proprietor's rights." *L. A. Westermann Co. v. Dispatch Printing Co.*, (C. C. A. 6th Cir. 1916) 233 Fed. 609, 147 C. C. A. 417.

Damages—"Actual" and "in lieu."—"Actual" damages means "real" as opposed to "nominal." It means "existent" without precluding the thought of change. "In lieu" means in place of the thing modified by the quoted phrase. What a plaintiff is entitled to ask of the court in its discretion is something in place of his real—i. e., legally existent and legally ascertained damages. *S. E. Hendricks Co. v. Thomas Pub. Co.*, (C. C. A. 2d Cir. 1917) 242 Fed. 37, 154 C. C. A. 629.

By the clause "in lieu of" this section contemplates an election or discretionary choice between actual damages and profits on the one side, and, on the other side, and assumed or somewhat arbitrary award of such damages as may be just. *L. A. Westermann Co. v. Dispatch Printing Co.*, (C. C. A. 6th Cir. 1916) 233 Fed. 609, 147 C. C. A. 417.

Nominal damages.—Nominal damages may be awarded for proven infringement where little or no actual injury appears. *S. E. Hendricks Co. v. Thomas Pub. Co.*, (C. C. A. 2d Cir. 1917) 242 Fed. 37, 154 C. C. A. 629.

Vol. II, p. 593, sec. 36.

- I. What constitutes infringement.
- II. Injunction and accounting.

I. WHAT CONSTITUTES INFRINGEMENT (p. 594)

Similarities in dramatic compositions.—Mere similarities in plot and lines, developed from a common source and accounted for by reference to the common source, do not constitute infringement. *Bachman v. Belasco*, (C. C. A. 2d Cir. 1915) 224 Fed. 817, 140 C. C. A. 263, affirming (S. D. N. Y. 1913) 224 Fed. 815.

Resemblances between two dramatic compositions in fundamental plot and minor and unimportant instances, does not involve infringement where the fundamental dramatic feature common to both, had long been common property. While copyright will of course protect the author who adds elements of literary value to an old plot, it will not prohibit the

use by some one else of the same old plot without the particular embellishment. *Eichel v. Marcin*, (S. D. N. Y. 1913) 241 Fed. 404.

Dramatization of novel.—The exhibition of a series of photographs of persons and things arranged on films as moving pictures, and so depicting the principal scenes of an author's work as to tell the story, is a dramatization of such work as held by the Supreme Court in *Kalem Co. v. Harper*, (1911) 222 U. S. 55, 32 S. Ct. 20, 56 U. S. (L. ed.) 92, Ann. Cas. 1913A 1285, cited in the original note. And an agreement granting the exclusive right of dramatizing an author's work would include the right to make a "movie play" as well as a spoken play. But if a grant made by an agreement is limited as "for presentation on the stage," or is limited to one version only and that in a particular manner or prohibits any change in the manner of performance or text, the right of dramatization for a moving picture play would not be comprehended. *Harper v. Klaw*, (S. D. N. Y. 1916) 232 Fed. 609, wherein it was held that an agreement, authorizing the defendant to dramatize the novel "Ben Hur" and giving the "exclusive right of producing such dramatic version on the stage" did not confer on the defendant moving picture rights in the play and that its production in that mode and method would be an infringement of the plaintiff's copyright. The language of the agreement was held to be incapable of application to any method of producing photoplays in commercial use and to be not only inconsistent with but repugnant to the thought of making "movies" out of "Ben Hur."

An exclusive right to dramatize a novel "for presentation on the stage" was held to mean an exclusive right to dramatize a spoken play and did not comprehend the independent right to dramatize the novel for a moving picture play. *Klein v. Beach*, (S. D. N. Y. 1916) 232 Fed. 240, *affirmed* (C. C. A. 2d Cir. 1917) 239 Fed. 108, 151 C. C. A. 282.

Infringement of musical copyright.—Where two compositions were considerably different, both in theme and execution, except as to the particular phrase, "I hear you calling me" and the music accompanying those words was practically identical in both compositions, it was held that the use of this similar phraseology and the similar bars of music was sufficient to warrant the charge of piracy and infringement of copyright. *Boosey v. Empire Music Co.*, (S. D. N. Y. 1915) 224 Fed. 646.

Second hand books.—One may sell a second hand copyrighted book for what it is. He may rebind or otherwise improve its condition or appearance for the purposes of a resale. But if he supplies missing parts by copying the maps and

of reprinting portions of the original text and incorporates these reproduced parts with the old books, and sells them as the publications of the original publishers, it constitutes an infringement of copyright. *Ginn v. Apollo Pub. Co.*, (E. D. Pa. 1914) 215 Fed. 772.

A photograph of a street scene, held to be a proper subject of copyright, is infringed by a lantern slide reproduction. *Pagano v. Chas. Beseler Co.*, (S. D. N. Y. 1916) 234 Fed. 963.

II. INJUNCTIONS AND ACCOUNTING (p. 601)

Bill or complaint—Misjoinder of parties plaintiff.—The misjoinder of a party plaintiff having no interest, and to whom no relief can be granted, renders the complaint multifarious and devoid of equity, and the complaint must be dismissed. *Tully v. Triangle Film Corp.*, (S. D. N. Y. 1916) 229 Fed. 297.

Exhibits.—In accordance with rule 2 of the Supreme Court adopted pursuant to section 25 (see vol. 2, p. 587) a copy of the work alleged to be infringed must accompany the complaint or its absence be explained. "It sometimes happens that redress by injunction in case of this kind must be speedily obtained in order to prevent irreparable injury, and that the plaintiff may not have at hand a copy of the manuscript, whereas he can describe, for all practical purposes, the substance of the subject-matter of his copyrighted work; but the rule must be followed, and, if the work cannot be produced, satisfactory reasons for its absence must be presented. *Tully v. Triangle Film Corp.*, (S. D. N. Y. 1916) 229 Fed. 297.

Preliminary injunction.—Where a novel and an alleged infringing photoplay had some marked similarities, but neither was wholly original, and the principal theme and many incidents were derived from common sources and the question of infringement was therefore by no means clear, a preliminary injunction was denied. *Bobbs-Merrill Co. v. Equitable Motion Pictures Corp.*, (S. D. N. Y. 1916) 232 Fed. 791.

Where the author of a story conferred the whole copyright privilege upon his publisher to hold the same for its own benefit as to serial publication and as trustee for him, the author, as to all other rights, and the publisher thereafter released motion picture rights in the story, it was held that a preliminary injunction against the producers of the picture was properly denied the author where there was no actual notice or sufficient evidence of constructive notice to them. "Where one clothes another with apparent ownership, though actually as trustee, he cannot defeat the title of those

who in good faith, for a valuable consideration and without notice deal with the trustee." *Brady v. Reliance Motion Picture Corp.*, (C. C. A. 2d Cir. 1916) 229 Fed. 137, 143 C. C. A. 413. See also *Brady v. Reliance Motion Picture Corp.*, (S. D. N. Y. 1916) 232 Fed. 259.

Suspension of temporary injunction.—Where the sale of defendant's composition cannot interfere with the sale of plaintiff's composition by virtue of the inherent difference, generally speaking, of the tastes to which they appeal, and the case is therefore not one where the plaintiff's commercial exploitation of their composition is interfered with, but one which involves solely the rights under the statute, a temporary injunction will be suspended on the filing of a bond and periodical statements of sales, pending final hearing or appeal. *Boosey v. Empire Music Co.*, (S. D. N. Y. 1915) 224 Fed. 646.

Computation of profits recoverable.—In copyright as in patent cases, the purpose is to find the amount of damages or of profits. The difference in the two classes of cases is a practical one. In patent cases, the profits are found by contrasting the amount of proceeds and sales made with the total cost of production. In copyright cases under this section the plaintiff may show only the receipts, or debit side of the account, and put upon the defendant the burden of proving the cost of production, or the plaintiff may exact the penalty. A successful plaintiff is thus given something in the nature of

certain options. He may take damages and profits or the penalty imposed. If he takes profits, he may avail himself of the method of proving profits given by the Act of 1912. This method, however, is not exclusive. Whatever method he adopts, he may apply it by calling upon the defendant to account, or by proving either sales or profits through and by evidence introduced or witnesses called by him. He may require the production of books and papers, and in proper cases offer them as part of his evidence in proof of either sales or profits. He may compel such production either by notice, or through an order to produce, or by a subpoena duces tecum. *Ginn v. Apollo Pub. Co.*, (E. D. Pa. 1915) 228 Fed. 214.

Vol. II, p. 608, sec. 40.

Counsel fees.—The allowance of counsel fees is a matter peculiarly within the discretion of the court awarding the same. *S. F. Hendricks Co. v. Thomas Pub. Co.*, (C. C. A. 2d Cir. 1917) 242 Fed. 37, 154 C. C. A. 629, wherein the court declined to disturb an award of counsel fees fixed by the trial judge.

Vol. II, p. 622, sec. 3.

Chromos.—As chromos are plainly omitted from this section, they do not come under the provision relating to registration in the patent office. *Stecher Lithographic Co. v. Dunston Lithograph Co.*, (W. D. N. Y. 1916) 233 Fed. 601.

COSTS

Vol. II, p. 628, sec. 824.

"For each deposition," etc.—Examination before commissioner.—There is not a uniformity of opinion in the courts as to whether an examination before a commissioner shall be treated as a deposition under this section. See the original annotations. In *The Mary*, (W. D. Wash. 1916) 233 Fed. 121, on a motion to disallow proctor's fees on taking testimony before a court commissioner of 10 witnesses, the tax of \$2.50 was allowed as to all the witnesses except one, as to whom it was disallowed on the ground that his testimony was immaterial.

Disbursements for transcribing deposition.—The allowance of disbursements for transcribing a deposition pertains directly to testimony intended to be used in the case, and when the deposition has been taken in good faith and under apparent necessity therefor, the fee for transcribing

it so that it can be used may be allowed in the discretion of the court, even though the witness himself is produced and for this reason the deposition is not used. *Alaska Steamship Co. v. Gilbert*, (C. C. A. 9th Cir. 1916) 236 Fed. 715, 150 C. C. A. 47.

"Admitted in evidence in a cause."—In respect to depositions in the admiralty court, no proctor's fee is recoverable in a cause unless the deposition is admitted in evidence. *Alaska Steamship Co. v. Gilbert*, (C. C. A. 9th Cir. 1916) 236 Fed. 715, 150 C. C. A. 47.

Docket fee—Entry of decrees by consent.—A docket fee cannot be allowed in a suit in admiralty where the decree was entered as a matter of course upon consent of the parties and not by reason of the submission of any question of law or fact to the court. *The Dwinsk*, (S. D. N. Y. 1915) 227 Fed. 958.

Vol. II, p. 641, sec. 974.

"Costs"—Preliminary examination.—In *U. S. v. Smith*, (M. D. Tenn. 1917) 240 Fed. 756, the court said: "Under this section the word costs as used in reference to prosecutions for fines or forfeitures, means the 'taxable costs of the trial before the court and petit jury in which defendants have been convicted.' *United States v. Wilson* (C. C.) 193 Fed. 1007. That is, in effect, in such cases the word 'costs' means merely the taxable costs of the court cause. It is earnestly insisted, however, in behalf of the Government, that 'the costs of the prosecution,' which under this section may be awarded against a defendant upon conviction for any other offense, not capital, that is, offenses punishable by imprisonment, is a broader term than the word 'costs' as used in reference to prosecutions for fines or forfeitures merely, and hence includes other costs of the entire prosecution, such as those incurred in the preliminary proceedings before a Commissioner and grand jury, which may be taxed against a convicted defendant under this section, although not, strictly speaking, costs of the cause. While it may perhaps be that the term 'costs of the prosecution' is broader than the word 'costs,' and may include costs of the prosecution which are not costs of the cause itself, such as the fees of witnesses examined before the grand jury prior to the return of an indictment, this would not strengthen the Government's position in the instant case, since the awarding of the entire 'costs of the prosecution' is, under the statute, discretionary with the court, and in the instant case, under the judgment, which was rendered at a former term and has now passed beyond the control of the court, it was not awarded that the defendants pay 'the costs of the prosecution,' but merely 'the costs of the cause.' Obviously the costs of the preliminary proceeding before the Commissioner are not part of the costs of the cause, within the definition of 'costs' given in *United States v. Wilson* (C. C.), *supra*. The preliminary proceedings before the Commissioner are, it is settled, not a part of the cause in the court itself. There is no 'cause' in the court until an indictment or information is filed; the filing therein of the Commissioner's transcript not being the institution of a suit, but having as its object the giving of information to the district attorney that the defendant has been held to bail or committed to await the action of the grand jury." See to the same effect, *U. S. v. Briebach*, (E. D. Ark. 1917) 245 Fed. 204.

Conviction for criminal contempt.—On a conviction for criminal contempt it is within the power of the trial judge to require payment of costs, not as a fine but as are incident of the judgment of

conviction. *Oates v. U. S.*, (C. C. A. 4th Cir. 1916) 233 Fed. 201, 147 C. C. A. 207.

Cited without specific application in *American Surety Co. v. U. S.*, (C. C. A. 5th Cir. 1917) 239 Fed. 680, 152 C. C. A. 514, wherein costs were included as part of a judgment of conviction for rebating.

Vol. II, p. 644, sec. 982.

Dismissal on eve of trial.—Waiting until the moment of trial to dismiss a proceeding furnishes ample ground for the court to tax as costs every item which the law permits. In fact the circumstances may justify a court of equity in going as far as possible in compelling reimbursement for expenditures defendant made in good faith, in preparation for the trial of the case. *Bone v. Walsh Constr. Co.*, (S. D. Ia. 1916) 235 Fed. 901.

But, upon dismissal, the court cannot tax any costs which could not be taxed if the case had gone to trial and there had been a decree for the defendant. There is no authority for permitting a penalty to be assessed because of the dismissal of the case on the eve of the trial. *Bone v. Walsh Constr. Co.*, (S. D. Ia. 1916) 235 Fed. 901.

Expenses for expert witnesses.—In *Bone v. Walsh Constr. Co.*, (S. D. Ia. 1916) 235 Fed. 901, on motion to tax costs, the defendant's disbursements for expert witnesses in the preparation of a case and in attendance for the trial, were denied. But the statutory witness fees were allowed.

Vol. II, p. 644, sec. 983.

Cases where costs are recoverable.—This section, when it refers to "trials in cases where by law costs are recoverable," means that costs are recoverable in all cases where by any provision of statute any costs are recoverable. *Motion Picture Patents Co. v. Universal Film Mfg. Co.*, (S. D. N. Y. 1916) 232 Fed. 263.

Exemplifications and copies.—For exemplifications and copies of papers necessarily obtained for use on a trial, "necessarily" must be limited to mean those exemplifications and copies of papers which are essential to the cause. *Motion Picture Patents Co. v. Universal Film Mfg. Co.*, (S. D. N. Y. 1916) 232 Fed. 263.

For an extended memorandum of items of copies of papers, in a suit for infringement of patent, considered and held to be taxable, see *Motion Picture Patents Co. v. Universal Film Mfg. Co.*, (S. D. N. Y. 1916) 232 Fed. 263. See also *Bone v. Walsh Constr. Co.*, (S. D. Ia. 1916) 235 Fed. 901.

Stenographer's minutes.—A copy of the stenographer's minutes of a trial furnished to one of the parties is not a copy of a paper necessarily obtained for use on the trial within the meaning of this section. *Stallo v. Wagner*, (C. C. A. 2d Cir. 1917) 245 Fed. 636, 158 C. C. A. 64.

A docket fee is unquestionably costs. *Motion Picture Patents Co. v. Universal Film Mfg. Co.*, (S. D. N. Y. 1916) 232 Fed. 263.

Vol. II, p. 647, sec. 1.

Liability of government for costs.—Congress did not intend that the United

States should be liable for any of the costs incurred under the provisions of this Act. *U. S. v. Fair*, (N. D. Cal. 1916) 235 Fed. 1015, wherein it was held that the court was without power to order the transcription of the testimony at the expense of the government or at the expense of the reporter, where he was not an officer of the court.

CRIMINAL LAW

Vol. II, p. 654, sec. 1014.

Nature of proceedings.—Proceedings before a commissioner, or other magistrate authorized to conduct examinations under R. S. sec. 1014, are merely preliminary for the purpose of ascertaining whether there is reasonable cause to believe that the person brought before the examining officer has violated a statute of the United States, and, if he so finds, it is his duty to hold or admit him to bail, to await the action of the grand jury. In no sense can it be said that this is a trial, for no judgment or sentence can be pronounced or imposed by the commissioner, or any judge, sitting as an examining magistrate, even if it is the district judge, who holds the examination. *U. S. v. Briebach*, (E. D. Ark. 1917) 245 Fed. 204.

Following state practice—*Mode of process*.—It has been assumed that the phrase "agreeably to the usual mode of process against offenders in such state" found in this section, regulates and controls the steps to be taken upon bailing one who has been indicted by a grand jury of the United States as well as those preliminary examinations to which parts of the section are particularly appropriate. *Ewing v. U. S.*, (C. C. A. 8th Cir. 1917) 240 Fed. 241, 153 C. C. A. 167.

Liability upon forfeiture of bail bond.—Where a state statute enumerates the causes which will exonerate a defendant and his sureties from liability upon a forfeiture taken, the state procedure will govern the federal courts in a proceeding by the government for forfeiture of a bail bond. *De Orozco v. U. S.*, (C. C. A. 5th Cir. 1916) 237 Fed. 1008, 151 C. C. A. 70.

Removal of accused to trial district.—Offense against the United States.—An offense under the Alaska Criminal Code is not an offense against the laws of the United States and an offender thereunder, present in a federal district, cannot be removed to the District Court of Alaska under the provisions of this section. *Ex parte Krause*, (W. D. Wash. 1915) 228 Fed. 547.

Vol. II, p. 672, sec. 1028.

A certified copy of order of sentence and record of conviction, is sufficient to authorize the retention of the prisoner without any warrant or mittimus. *Ex parte Thurston*, (W. D. Wash. 1916) 233 Fed. 847.

Vol. II, p. 676, sec. 1024.

Election of counts.—Where the different counts of an indictment charge different offenses, but all violations of the same statute, and all relate virtually to the same transaction, so that the evidence offered to sustain one is also admissible under the others, the court may properly refuse to require the government, at the close of its case, to elect upon which of the counts conviction would be sought. *Wallace v. U. S.*, (C. C. A. 7th Cir. 1917) 243 Fed. 300, 156 C. C. A. 80.

Offenses held to have been properly joined.—In one count of the indictment the defendant was charged with embezzling money, and in the other with embezzling property, both belonging to the United States. It was held that these two offenses being of the same class of crimes, were properly joined in one indictment. *McNeil v. U. S.*, (C. C. A. 5th Cir. 1917) 246 Fed. 827, 159 C. C. A. 129.

Consolidation.—For a case giving a statement of matters embraced in two indictments, one charging acts in restraint of trade in violation of the Sherman Act and the other charging a conspiracy to begin and set on foot certain military enterprises to be carried on from within the United States against a foreign power, which sufficiently showed that the charges contained in them were charges for acts and transactions connected together and which might be properly joined, within the meaning of this section, see *U. S. v. Bopp*, (N. D. Cal. 1916) 237 Fed. 283.

Vol. II, p. 681, sec. 1025.

Effect of section.—This section, in effect, directs that the existence of ir-

regularity, if error of form, shall not be presumed a wrong to the accused; but it must be shown to be so. *Moffatt v. U. S.*, (C. C. A. 8th Cir. 1916) 232 Fed. 522, 146 C. C. A. 480.

Selection of grand jury.—The designation made by the statute of the officials charged with the duty of selecting the names to be drawn from to make up grand and petit juries is a means adopted to prevent the pollution of the stream of justice at its source. The provision was intended to guard the administration of the criminal law against improper influences. The court is not vested with a discretionary power to dispense with a compliance with an essential feature of a safeguard prescribed by law. An impeachment of an indictment because of a non-compliance with the requirement that the names put in the jury box be selected by specified officials is not a suggestion of a defect or imperfection in matter of form only under this section, but goes to the vital question of the legality of the existence of the body by which the charge was made, and of its right or power to make a charge which the party charged can be required to defend against. *Dunn v. U. S.*, (C. C. A. 5th Cir. 1917) 238 Fed. 508, 151 C. C. A. 444.

Indictment—Sufficiency in general.—In its last analysis the question of the sufficiency of an indictment under this section is: Does the indictment contain a sufficient accusation of crime, and do its averments furnish the accused with such a description of the charge as will enable him to make his defense and avail himself of his conviction or acquittal for protection against future proceedings for the same offense? And is the indictment sufficient to inform the court of the facts alleged, so that it may decide whether those facts are sufficient in law to sustain a conviction if one should be had? *Knauer v. U. S.*, (C. C. A. 8th Cir. 1916) 237 Fed. 8, 150 C. C. A. 210.

Particularity.—In *Lamar v. U. S.*, (1916) 241 U. S. 103, 36 S. Ct. 535, 60 U. S. (L. ed.) 912, the indictment, charging a violation of section 32 of the Penal Code (vol. 7, p. 516) alleged that at a stated time the accused "unlawfully, knowingly and feloniously did falsely assume and pretend to be an officer of the Government of the United States, to-wit, a member of the House of Representatives of the Congress of the United States of America, that is to say, A. Mitchell Palmer, a member of Congress representing the Twenty-sixth District of the State of Pennsylvania, with the intent, then and there, to defraud Lewis Cass Ledyard," and other persons who were named and others to the grand jury unknown, "and the said defendant, then and there, with the intent and purpose aforesaid, did take upon himself to act as

such member of Congress against the peace," etc. It was urged that the indictment was defective because of its failure to describe the circumstances of the offense. Holding that the case was clearly covered by this section the court said: "It will be observed from the text of the indictment which we have previously reproduced that it clearly charges the illegal acts complained of and the requisite fraudulent intent, states the date and place of the commission of the acts charged and gives the name and official character of the officer whom the accused was charged with having falsely personated. It is moreover to be observed that there is not the slightest suggestion that there was a want of knowledge of the crime which was charged or of any surprise concerning the same, nor is there any intimation that any request was made for a bill of particulars concerning the details of the offense charged.

Allegation of incorporation.—In view of this section, it was unnecessary to charge in an indictment, that a railway company, whose car was broken into for the purpose of committing larceny, was an incorporated company, as such omission could have no tendency to prejudice the defendant. *Morris v. U. S.*, (C. C. A. 8th Cir. 1916) 229 Fed. 516, 143 C. C. A. 584.

So, an indictment for use of the mails to defraud a bank, which fails to charge that the bank was incorporated, will not be quashed since the omission can in no wise prejudice the defendant. *McClendon v. U. S.*, (C. C. A. 8th Cir. 1916) 229 Fed. 523, 143 C. C. A. 591. And see further to the same effect *Kasle v. U. S.*, (C. C. A. 6th Cir. 1916) 233 Fed. 878, 147 C. C. A. 552.

Indictment held sufficient.—An indictment charging a violation of the Anti-Drug Act, in that the defendant, on a specified date gave an order for opium, which "was thereafter accepted" and "after acceptance" he failed to preserve a duplicate thereof "in such a way as to be readily accessible" contrary to law, was held saved under this section from the objection that the offense was not alleged of a day certain, since the indictment referred to things past and an offense completed and at least of date between acceptance of the order and indictment, an allegation of some unnamed date within the essential period could not tend to the prejudice of the defendant. *U. S. v. Gaag*, (D. C. Mont. 1916) 237 Fed. 728.

Rule applicable to information.—The rule applicable to an information is no less liberal than that applicable to an indictment under this section. Its averments of facts constituting the offense need be only so certain and specific as fairly to inform defendant of the crime intended to be alleged, and as to make

the judgment of conviction or acquittal thereon a complete defense to a second prosecution of the defendant for the same

offense. *Simpson v. U. S.*, (C. C. A. 6th Cir. 1917) 241 Fed. 841, 154 C. C. A. 543.

CUSTOMS DUTIES

Vol. II, p. 724, sec. 1.

Purpose and effect of Act—Canadian reciprocity.—The Tariff Act of 1913 was designed to be a complete revision of the tariff laws of the country, and its wording very clearly shows that it was intended as a substitute for all prior tariff legislation not saved by the Act itself. The rule seems to be well settled that an act of that character must be held to have repealed all prior laws not expressly continued in force and relating to the same subject. And so, the Tariff Act of 1913 repealed section 2 of the Canadian Reciprocity Act. *Dow Co. v. U. S.*, (1916) 7 U. S. Cust. App. 343.

Vol. II, p. 730, par. 17.

Medicinal preparation.—The fact that preparations designed to cure or alleviate, or to palliate or prevent, a disease of the human body, also afford nourishment to the patient does not necessarily exclude them from the classification of medicinal compounds or articles similar thereto. *Britt v. U. S.*, (1916) 7 U. S. Cust. App. 118.

"Malt soup stock" and "food maltose."—Packages of less than 2½ pounds of Loefflund's malt soup stock, a preparation of 57 per cent maltose and 12 per cent dextrin with a certain percentage of potassium carbonate, designed to be given, in combination with milk, wheat flour, and water, to marantic infants for their nourishment and to counteract their intestinal acid intoxication, are dutiable under paragraph 17, as being similar to medicinal compounds. *Britt v. U. S.*, (1916) 7 U. S. Cust. App. 118.

Vol. II, p. 731, par. 20.

Thioindigo—Coal-tar dyes or colors.—Colors known as thioindigo, which are shown to be derived from naphthalene, a coal-tar product, and not from indigo are dutiable as coal-tar dyes or colors under this paragraph. *U. S. v. Hensel*, (1917) 7 U. S. Cust. App. 391.

Vol. II, p. 733, par. 27.

Spruce gum.—There being no evidence in the record that spruce gum is a drug, it cannot be classified under paragraph 27. *U. S. v. Eastern Drug Co.*, (1916) 7 U. S. Cust. App. 210.

Vol. II, p. 737, par. 48.

Toilet talc.—Powdered talc, to which a small quantity of boric acid has been added, the use and purpose of which are as a toilet preparation for application to the skin, is dutiable according to that use under this paragraph. *Roger v. U. S.*, (1916) 7 U. S. Cust. App. 89.

Vol. II, p. 739, par. 63.

Water color boxes.—See under this title, vol. 2, p. 820, par. 342.

Vol. II, p. 740, par. 69.

Toilet talc.—See under this title, vol. 2, p. 737, par. 48.

Vol. II, p. 741, par. 72.

Semivitrified tiles are dutiable under this paragraph. *U. S. v. Vandegrift*, (1916) 7 U. S. Cust. App. 77.

Vol. II, p. 742, par. 79.

Earthenware molded in imitation of cameos is dutiable as "earthenware . . . ornamented or decorated in any manner, and manufactures in chief value of such ware not specially provided for." *Wedge-wood v. U. S.*, (1917) 7 U. S. Cust. App. 434.

Vol. II, p. 744, par. 82.

Flaming arc-lamp carbons in chief value of lampblack or retort carbon, with or without a core impregnated with chemical salts, are dutiable under this paragraph, as composed chiefly of lampblack or retort carbon at forty cents per hundred feet, and not as carbons for flaming arc lamps not specially provided for at thirty per cent ad valorem. *Hirschberg v. U. S.*, (1916) 7 U. S. Cust. App. 40.

Vol. II, p. 745, par. 84.

Glass signs.—Glass signs made of cylinder glass, sand blasted and colored, their edges ground, bearing the word "exit" stenciled by sand blasting or etched with acid, ready for use, are dutiable as glass articles, colored and sand blasted. *U. S. v. Bache*, (1917) 7 U. S. Cust. App. 445.

Vol. II, p. 749, par. 93.

A mounted projection lens is comprehended within this paragraph. *U. S. v.*

American Express Co., (1916) 7 U. S. Cust. App. 169.

Vol. II, p. 749, par. 95.

Penholder racks or stands in chief value of glass, with gold or silver plated metal rims, are dutiable as manufactures of glass, under paragraph 95. *Cross Co. v. U. S.*, (1916) 7 U. S. Cust. App. 43.

Mirrors for vanity cases.—Small mirrors suitable for use in fitting out vanity cases are dutiable as mirrors under this paragraph. *Rumpp v. U. S.*, (1916) 7 U. S. Cust. App. 203.

Wind shields.—Merchandise consisting of two polished cylinder glass sheets glued together, with a rim of adhesive substance to keep dampness from between the sheets, designed for use as material for automobile wind shields, is dutiable as "all glass or manufacture of glass . . . or of which glass is the component material of chief value not specially provided for" under this paragraph. *U. S. v. Schrenk*, (1917) 7 U. S. Cust. App. 451.

Vol. II, p. 752, par. 102.

Tant iron as ferrosilicon.—See under this title, vol. 2, p. 862, par. 518.

Vol. II, p. 754, par. 114.

Base-metal safety pins and hair pins coated with lacquer.—See under this title, vol. 2, p. 763, par. 168.

Vol. II, p. 758, par. 128.

Construction.—The first proviso to paragraph 128 does not mean that parts, to be included in the proviso, must be imported with the other parts of the article. *U. S. v. Witte Cutlery Co.*, (1916) 7 U. S. Cust. App. 181.

Sheep shears.—See under this title, vol. 2, p. 848, par. 391.

Vol. II, p. 760, par. 144.

Antimony sulphide.—Antimony sulphide is not a salt or compound of antimony oxide, and cannot be dutiable under paragraph 144, not being more specifically provided for elsewhere, it is relegated to the residuary provision for chemical salts and compounds in paragraph 5. *U. S. v. Innis*, (1916) 7 U. S. Cust. App. 3.

Vol. II, p. 762, par. 154.

Tant iron as ferrosilicon.—See under this title, vol. 2, p. 862, par. 518.

Vol. II, p. 763, par. 158.

"Composed wholly of."—An article made of metal and coated with lacquer for purposes of preservation and appearance is "composed wholly of" that metal within the meaning of this paragraph.

Hague v. U. S., (1916) 7 U. S. Cust. App. 75.

Base-metal safety pins and hair pins coated with lacquer.—The fact that pins answering to the description of paragraph 158 are coated with lacquer does not take them without the operation of the words "composed wholly of" certain named metals in that paragraph and make them dutiable as manufactures of wire under paragraph 114. *Hague v. U. S.*, (1916) 7 U. S. Cust. App. 75.

Vol. II, p. 764, par. 162.

Construction.—The fact that paragraph 162 provides a special method of appraising zinc ores does not relieve them from being entered upon invoice as other importations, nor does it relieve their importer from the consequences of undervaluation. *National Zinc Co. v. U. S.*, (1916) 7 U. S. Cust. App. 145.

Vol. II, p. 765, par. 165.

Construction.—This paragraph, though providing for machine tools, does not provide for parts of them. *Norma Co. v. United States*, 6 Ct. Cust. App. 89; *U. S. v. Leigh*, (1916) 7 U. S. Cust. App. 228.

Attachment for carding machine.—See under this title, vol. 2, p. 765, par. 167.

Marine engine.—See under this title, vol. 2, p. 886, § 4, par. J, subsec. 5.

Vol. II, p. 765, par. 167.

Clo-clo braids, consisting of pieces of lead molded upon a flax cord, are dutiable under this section. *U. S. v. Macy*, (1916) 7 U. S. Cust. App. 8.

Attachments for carding machines.—An attachment called "Dronsfield's patent traverse wheel grinder," designed to fit on a carding machine by means of bearings provided for it on the carding machine and to sharpen the teeth of the card clothing of the carding machine by the incidental use of the power which operates the carding machine, is not a machine, but a part of one, dutiable as a manufacture of metal not specially provided for under this paragraph. *U. S. v. Leigh*, (1916) 7 U. S. Cust. App. 228.

Sugar-manufacturing machinery.—A machine used to convert crystalline into amorphous sugar for making chocolate is dutiable as a manufacture of metal not specially provided for under this paragraph. *Downing v. U. S.*, (1916) 7 U. S. Cust. App. 287.

Pedometers.—Pedometers having a catch by which they are attached to the vest pocket, used principally by practical people for utilitarian purposes, are not like the articles named in the third clause of paragraph 356. They are not dutiable under paragraph 356, but are dutiable as metal articles not specially provided for

under this paragraph. *U. S. v. Susfeld*, (1916) 7 U. S. Cust. App. 126.

Rosaries in chief value of silver-plated metal, and which have only a devotional use, are dutiable under this paragraph. *U. S. v. American Bead Co.*, (1916) 7 U. S. Cust. App. 132.

Gold or silver plated hand bag or purse frames.—Hand bag or purse frames with a substantial portion of their surfaces plated with gold or silver are dutiable under the first clause of this paragraph as "articles or wares plated with gold or silver" at 30 per cent ad valorem, and not under the last clause as metal articles not plated with gold or silver at 20 per cent ad valorem. *Cross Co. v. U. S.*, (1916) 7 U. S. Cust. App. 43.

Policemen's whistles.—Policemen's whistles of metal are dutiable under paragraph 167 as articles or wares composed wholly or in chief value of metal. *Schoverling v. U. S.*, (1916) 7 U. S. Cust. App. 172.

Articles or wares of metal.—Metal handles for small articles of personal convenience (such as buttonhooks), pin and needle boxes, tweezers, manicuring implements, pin or hairpin boxes, and perfume or smelling-salt flasks, shown not to be articles designed to be carried on or about or attached to the person, are dutiable as articles or wares of metal under this paragraph. *Rumpp v. U. S.*, (1916) 7 U. S. Cust. App. 203.

Wireless apparatus.—See under this title, vol. 2, p. 885, § IV J, subsec. 6.

Pencils of wood with metal holders.—See under this title, vol. 2, p. 837, par. 378.

Metal triangle.—See under this title, vol. 2, p. 835, par. 373.

Vol. II, p. 769, par. 173.

Reeds made from rattan, used in the manufacture of furniture, chairs, baby carriages, brooms, and some other articles, are dutiable under this paragraph. *Graser-Rothe v. U. S.*, (1916) 7 U. S. Cust. App. 142.

Vol. II, p. 770, par. 176.

Manufacture of wood chip.—See under this title, vol. 2, p. 833, par. 368.

Vol. II, p. 776, par. 200.

Nori—Seaweed.—See under this title, vol. 2, p. 866, par. 552.

Vol. II, p. 777, par. 210.

Immortelles, dried and dyed.—Dried and dyed immortelles are not dutiable as unenumerated articles under paragraph 385, or as artificial and ornamental flowers under paragraph 347, but are dutiable by similitude as preserved cut flowers under this paragraph. *Bayersdorfer v. U. S.*, (1916) 7 U. S. Cust. App. 66.

"Imported exclusively for propagating purposes."—When Congress limited the proviso of paragraph 210 to "bulbs imported exclusively for propagating purposes," it had in mind the use of the bulbs and not the business of the importer; and so the fact that bulbs fit only for such purpose were sold, and not used, by the importer would not prevent their falling within the proviso. *Maltus v. U. S.*, (1916) 7 U. S. Cust. App. 320.

Orchid plants.—Orchid plants, known as *Cattleyas*, which at the time of importation had already flowered, would never flower again, and were useful for no commercial purpose except propagating, and which, although not true bulbs, were known to the trade as orchid bulbs, were entitled to free entry under the proviso to this paragraph, as mature mother flowering bulbs imported exclusively for propagating purposes. *Maltus v. U. S.*, 6 Ct. Cust. Appls. 376; *Maltus v. U. S.*, (1916) 7 U. S. Cust. App. 320.

Vol. II, p. 778, par. 212.

Star anise seed.—The crude seed of the star anise, a plant totally different from the anise, is not dutiable as "anise seed;" or, its oil being obtained by distillation and not expression, as "other oil seeds," under this paragraph, but admissible free as "drugs, such as . . . seeds (aromatic, not garden seeds), . . . which are natural and uncompounded drugs and not edible . . . and are in a crude state," under paragraph 477. *U. S. v. McKesson*, (1916) 7 U. S. Cust. App. 13; *U. S. v. Tappenbeck*, (1916) 7 U. S. Cust. App. 17.

Vol. II, p. 780, par. 217.

Stuffed olives.—See under this title, vol. 2, p. 782, par. 218.

Vol. II, p. 782, par. 218.

Stuffed olives.—Olives pitted and stuffed with sweet red peppers are dutiable as olives. *Mawer Co. v. U. S.*, (1917) 7 U. S. Cust. App. 493.

Vol. II, p. 783, par. 226.

Nuts of all kinds include inedible as well as edible nuts. *Sheldon v. U. S.*, (1917) 7 U. S. Cust. App. 454.

Betel nuts.—Betel nuts are dutiable as nuts and not as crude drugs (par. 477) or nonenumerated articles (par. 385). *Sheldon v. U. S.*, (1917) 7 U. S. Cust. App. 454.

Vol. II, p. 789, par. 246.

Concentrated fluid malt extract.—Malt extract of the consistency of thick molasses is dutiable as fluid, and not condensed, malt extract under this paragraph. *U. S. v. Britt*, (1916) 7 U. S. Cust. App. 63.

Vol. II, p. 791, par. 251.

"Embroidery cottons."—The term "embroidery cottons," as used in paragraph 251, does not include only those used in hand embroidery, nor is it limited to a commodity imported only in skeins. *Straus v. U. S.*, (1917) 7 U. S. Cust. App. 414.

Machine embroidery cottons.—Cotton yarns used in an embroidery machine for executing the embroidery design on the face of the fabric are dutiable as "embroidery cottons" under this paragraph, and not as "cotton thread and carded yarn, warps, or warp yarn" (par. 250). *Straus v. U. S.*, (1917) 7 U. S. Cust. App. 414.

Vol. II, p. 795, par. 258.

Jacquard figured flax laces.—Jacquard figured flax laces, chiefly used in making lace curtains, are dutiable under this paragraph. *U. S. v. Snow's U. S. Sample Express Co.*, (1916) 7 U. S. Cust. App. 312.

Vol. II, p. 803, par. 290.

Angora goat hair coat linings.—See under this title, vol. 2, p. 806, par. 308.

Vol. II, p. 805, par. 300.

"Similar rugs."—All the rugs named in this paragraph are handmade or hand tufted. Hence, a rug not handmade or hand tufted is not a "similar rug" within the paragraph. *Beuttell v. U. S.*, (1916) 7 U. S. Cust. App. 356.

"Woven whole for rooms."—The language "carpets of every description, woven whole for rooms," in this paragraph, shows, by the express inclusion of this class of "carpets" or carpeting, that the other enumerations therein would not otherwise have included it; in other words, that carpets and carpeting and things made therefrom were not otherwise embraced within paragraph 300. *Beuttell v. U. S.*, (1916) 7 U. S. Cust. App. 356.

Vol. II, p. 805, par. 303.

"Rugs for floors."—This paragraph ("rugs for floors") includes only those rugs made from carpets or carpeting. *Beuttell v. U. S.*, (1916) 7 U. S. Cust. App. 356.

Vol. II, p. 806, par. 308.

Angora goat hair coat linings.—Angora goat hair coat linings, not cut to form or shape, are dutiable as a manufacture of Angora goat hair under paragraph 308. *Rosenberg v. U. S.*, (1916) 7 U. S. Cust. App. 213.

Vol. II, p. 808, par. 318.

Silk mourning crapes.—Goods known commercially as silk mourning crapes,

crapes, varying in width from nineteen to forty-two inches, are dutiable under the general provision for woven fabrics of silk in paragraph 318. *Auffmordt v. U. S.*, (1916) 7 U. S. Cust. App. 56.

Vol. II, p. 811, par. 324.

Construction.—Typewriter paper.—This paragraph, calling for certain kinds of paper, "by whatever names known," includes typewriter paper of such kinds and prevents it from being dutiable as typewriter paper under paragraph 326. *Stone v. U. S.*, (1916) 7 U. S. Cust. App. 124.

"Gold borders."—Merchandise invoiced as "gold borders," consisting of metal-coated paper cut into strips each about two and a half feet long and a quarter of an inch wide, embossed with a small ornamental design and with the letters "P" and "T" left attached to a very narrow border at each end for convenience in handling, used for fancy wrapping around candy boxes or similar packages, is dutiable as a manufacture of metal-coated paper, and not as metal-coated paper itself, under this paragraph. *Kupfer Bros. Co. v. U. S.*, (1916) 7 U. S. Cust. App. 86.

Vol. II, p. 813, par. 326.

Typewriter paper.—See under this title, vol. 2, p. 811, par. 324.

Vol. II, p. 815, par. 332.

Gold borders.—See under this title, vol. 2, p. 811, par. 324.

Vol. II, p. 816, par. 333.

Necklaces, with or without base metal clasps, in chief value of beads, the beads being made of wood, gelatin, or paste, and china or colored glass, some in imitation of jet and amber, are dutiable as articles in chief value of beads under this paragraph, and not as jewelry under paragraph 356. *American Bead Co. v. U. S.*, (1916) 7 U. S. Cust. App. 18.

Imitation jet bead necklaces.—Necklaces substantially of imitation jet beads with imitation jet pendants are dutiable as beaded articles under this paragraph. *Wolff v. U. S.*, (1916) 7 U. S. Cust. App. 156.

Bead curtains.—Curtains composed in chief value of glass or rice paste beads strung on cotton threads suspended from a horizontal bar or rod are dutiable as "curtains . . . composed wholly or in chief value of beads." *U. S. v. Morimura*, (1916) 7 U. S. Cust. App. 285.

Vol. II, p. 818, par. 335.

Unfinished bamboo-chip hats.—Unblocked and untrimmings hats made of thin, narrow shavings of bamboo are dutiable as "hats . . . of . . . chip, . . .

not blocked or trimmed" under this paragraph. *Isler v. U. S.*, (1916) 7 U. S. Cust. App. 178.

Vol. II, p. 820, par. 342.

Toy defined.—An article designed, adapted, and used for serious instruction, no matter how elementary, and not for the amusement of children at play, is not a toy. *Illfelder v. U. S.*, (1916) 7 U. S. Cust. App. 53.

"Water color boxes."—Merchandise consisting of small boxes containing water colors of good quality and articles incidental to their use, designed, adapted, and used for elementary instruction in art and used to some extent also by artists, is not dutiable as toys under paragraph 342, but as artists' paints or colors under paragraph 63. *Illfelder v. U. S.*, (1916) 7 U. S. Cust. App. 53.

Vol. II, p. 822, par. 347.

Stuffed chicks and ducklings.—Dried skins of chicks and ducklings with the heads and feet attached, stuffed with cotton, fitted with bead eyes and wired so as to give them a natural appearance, and having a wire attachment apparently for the purpose of fastening them to other objects as decorations, were properly classified by the collector as "down dressed on the skin, . . . not suitable for use as millinery ornaments," under this paragraph. *Morimura v. U. S.*, (1917) 7 U. S. Cust. App. 378.

Vol. II, p. 824, par. 349.

Fans dutiable under paragraph.—The language, "fans of all kinds, except common palm-leaf fans," means that all fans except common palm-leaf fans are dutiable under that paragraph, even though they may respond also to the description of some other. *U. S. v. Field*, (1917) 7 U. S. Cust. App. 430.

Vol. II, p. 825, par. 356.

Imitation jet — Jewelry.—Congress has regarded imitation jet articles as separate from jewelry. *American Bead Co. v. U. S.*, (1916) 7 U. S. Cust. App. 18.

Imitations of precious stones and precious metals.—Necklaces and chains in imitation of precious stones and precious metals are commonly characteristic of jewelry. *American Bead Co. v. U. S.*, (1916) 7 U. S. Cust. App. 18.

Jewelry.—Jewelry is commonly composed of the precious metals or imitations thereof, or of precious or semiprecious stones, pearls, or imitations thereof, or cameos, coral, or amber, including artificial, synthetic, or reconstructed pearls, rubies, or other precious stones, strung or set. *American Bead Co. v. U. S.*, (1916) 7 U. S. Cust. App. 18.

Pocket cigar lighters.—Cigar lighters designed to be carried on the person are within paragraph 356, and also within paragraph 381. By virtue of paragraph 386 ("if two or more rates of duty shall be applicable to any imported article it shall pay duty at the highest of such rates") they are dutiable under paragraph 356. *Bischoff v. U. S.*, (1916) 7 U. S. Cust. App. 138.

Articles designed to be carried on or about or attached to the person.—Small brass-bound memorandum books with brass-capped lead pencil so fitted to the binding as to keep the book closed when not in use and small metal pencil cases and holders belong to the class of articles which are designed to be carried on or about or attached to the person. *Rumpp v. U. S.*, (1916) 7 U. S. Cust. App. 203.

Small containers of vanity articles.—Metal powder boxes, powder puff boxes, eyebrow pencil cases, and lip-stick boxes are suitable containers for vanity articles and preparations, and are properly classified under paragraph 356. *Rumpp v. U. S.*, (1916) 7 U. S. Cust. App. 203.

Articles or wares of metal.—See under this title, vol. 2, p. 765, par. 167.

Mirrors for vanity cases.—See under this title, vol. 2, p. 765, par. 95.

Pedometers.—See under this title, vol. 2, p. 765, par. 167.

Vol. II, p. 827, par. 358.

Handkerchiefs, embroidered or scalloped.—With reference to embroidered or scalloped, hemmed or unhemmed, linen or cotton handkerchiefs, paragraph 358 is more specific than paragraph 255 or paragraph 282, and classifies them for duty. *Field v. U. S.*, (1916) 7 U. S. Cust. App. 30.

"Clo-clo braids."—"Lead and cotton clo-clo braids," merchandise consisting of pieces of lead molded upon a flax cord, the whole being covered by tubular cotton braiding, lead being the component material of chief value, are not dutiable as being in part of braids, under paragraph 358, but as being in chief value of lead, under paragraph 167. *U. S. v. Macy*, (1916) 7 U. S. Cust. App. 8.

Silk veil.—A silk article known to the trade as a veil and as a scarf would be dutiable *eo nomine* as a veil under this paragraph. *Van Raalte v. U. S.*, (1916) 7 U. S. Cust. App. 299.

Silk mourning crepes.—See under this title, vol. 2, p. 808, par. 318.

Jacquard figured flax laces.—See under this title, vol. 2, p. 795, par. 258.

Vol. II, p. 831, par. 359.

Chamois-skin glove leather.—Chamois skins (invoiced as glove leather, natural dole and white dole), which have been subjected to a special treatment to fit

them for use as glove leather, are dutiable as "glove leathers" and not as "chamois skins." *U. S. v. Stiner*, (1917) 7 U. S. Cust. App. 485.

Vol. II, p. 831, par. 360.

Construction.—This paragraph should not, on account of the fact that it levies a higher rate of duty on the articles it names as "permanently fitted" with certain other articles, be construed to mean that an article, to be dutiable under it, must be susceptible of being fitted. *Brunswick-Balke-Collender Co. v. U. S.*, (1916) 7 U. S. Cust. App. 84.

Vol. II, p. 833, par. 368.

Manufacture of wood chip.—With respect to ropings made of wood chip, paragraph 368 ("manufactures of . . . chip") is more specific than paragraph 176 ("manufactures of wood"). *U. S. v. Kronfeld*, (1916) 7 U. S. Cust. App. 93.

Vol. II, p. 835, par. 373.

Musical instrument.—It is no part of the definition of a musical instrument that it can be used to produce a continuous melody and that a chromatic scale can be played upon it. *U. S. v. Sears*, (1916) 7 U. S. Cust. App. 60.

A metal triangle, with a wooden-handled hammer or striker, is dutiable as a musical instrument under this paragraph. *U. S. v. Sears*, (1916) 7 U. S. Cust. App. 60.

Vol. II, p. 836, par. 376.

Work of art—Definition.—"Works of art" does not cover the whole range of the beautiful and artistic, but only those productions of the artist which are something more than ornamental and decorative and which may be properly ranked as examples of the free fine arts, or, possibly, that class only of the free fine arts imitative of natural objects as the artist sees them, and appealing to the emotions through the eye alone. *U. S. v. Olivotti*, (1916) 7 U. S. Cust. App. 46.

A marble font and marble seats, the work of a sculptor and incidentally embellished by him with artistic carvings, are not sculpture or works of art under this paragraph, but manufactures of marble under paragraph 98. *U. S. v. Olivotti*, (1916) 7 U. S. Cust. App. 46.

Vol. II, p. 837, par. 378.

Pencils of wood with metal holders.—Wooden lead pencils with metal holders are not dutiable as entireties. The pencils are dutiable as such under paragraph 378, and the holders as metal articles under paragraph 167. *U. S. v. Borgfeldt*, (1916) 7 U. S. Cust. App. 367.

Vol. II, p. 839, par. 385.

Spruce gum is dutiable as a nonenumerated unmanufactured article under this paragraph. *U. S. v. Maine Cent. R. Co.*, (1916) 7 U. S. Cust. App. 114.

Pituitary glands.—The pituitary glands of calves, imported for the purpose of making from them a watery liquid hypodermically injected in obstetric work, are classifiable under this section. *Frankeld v. U. S.*, (1916) 7 U. S. Cust. App. 296.

Vol. II, p. 843, par. 386.

Pocket cigar lighters.—See under this title, vol. 2, p. 825, par. 356.

Vol. II, p. 848, par. 391.

Test of use.—Proof that a machine actually used in making chocolate is susceptible of being used in making sugar would not be sufficient to make it classifiable under paragraph 391 as "machinery for use in the manufacture of sugar." *Downing v. U. S.*, (1916) 7 U. S. Cust. App. 287.

Sugar-manufacturing machinery.—The language, "machinery for use in the manufacture of sugar," refers to the chief use made of such machinery when imported, and not to the use made of a particular importation. *Brown v. U. S.*, (1916) 7 U. S. Cust. App. 307.

Sheep shears.—"Sheep shears, specially designed for shearing sheep" and shown to be exclusively used for that purpose are admissible free of duty as "agricultural implements" under this paragraph. *United States v. Boker & Co.*, 6 Ct. Cust. App. 243; *U. S. v. Irwin*, (1916) 7 U. S. Cust. App. 362.

Shovels.—Long-handled, round-point polished shovels and D-handled, square-point polished shovels chiefly used by farmers for agricultural purposes are admissible free of duty as agricultural implements. *Tower v. U. S.*, (1917) 7 U. S. Cust. App. 408.

Vol. II, p. 852, par. 408.

"Printed."—The term "printed," as used in this paragraph, applies only to such printing as affects the character or condition of the woven fabrics as such, whether by way of ornamentation or exploitation, or for other like purpose. The conspicuous stenciling of the consignee's name upon a fabric for purposes of temporary identification does not make it a printed fabric. *Texas, etc., R. Co. v. U. S.*, (1916) 7 U. S. Cust. App. 328.

Vol. II, p. 858, par. 477.

Spruce gum.—There being no evidence in the record that spruce gum is a drug, it cannot be classified under this paragraph. *U. S. v. Eastern Drug Co.*, (1916) 7 U. S. Cust. App. 210.

Vol. II, p. 862, par. 517.

Wire of platinum and iridium is not admissible free of duty under this paragraph. It is an artificial combination and is dutiable under par. 114. *Bosch Magneto Co. v. U. S.*, (1916) 7 U. S. Cust. App. 50.

Vol. II, p. 862, par. 518.

Tant iron—"Iron in pigs"—Ferro-silicon.—Iron in the form of pigs, known by the proprietary name "tant iron," having a silicon content greater than that of ordinary pig iron but much less than that of ordinary ferrosilicon and manganese and sulphur contents greater than those of ferrosilicon, used for casting and machining into bowls to contain acids, shown to be unfit for use like ferrosilicon as an alloy in the manufacture of steel, is but a special kind of pig iron, and is dutiable as "iron in pigs." *U. S. v. Faunce*, (1917) 7 U. S. Cust. App. 426.

Vol. II, p. 863, par. 530.

Leather cue tips.—Cue tips, made by cutting with a round stamp a sheet of soft and a sheet of hard leather glued together, most of them having the soft-leather side rounded on the lathe, are too far advanced in condition to be admissible free under this paragraph; since they are a manufacture of leather, they are more specifically provided for by paragraph 360. *Brunswick-Balke-Collender Co. v. U. S.*, (1916) 7 U. S. Cust. App. 1.

Vol. II, p. 864, par. 545.

"Meats."—This paragraph contemplates such "meats" only as are of everyday consumption and the subject of the meat-inspection laws of the country, its states, and municipalities. *Frankeld v. U. S.*, (1916) 7 U. S. Cust. App. 296.

Vol. II, p. 866, par. 552.

Nori-seaweed.—Seaweed, dried, with nothing added to change its character, and packed in tin boxes as a convenient method of getting the product to market, is classifiable as crude seaweed. *United States v. Furuya & Co.*, (7 Ct. Cust. App. 495; *U. S. v. Ohashi Importing Co.*, (1917) 7 U. S. Cust. App. 487.

Vol. II, p. 877, par. 642.

"Acquired abroad."—Merchandise ordered by appellee in a foreign country from a foreign country for delivery in a foreign country, but delivered to and paid for by appellee in this country, was not "acquired abroad" within the meaning of this paragraph. *U. S. v. Hutchings*, (1916) 7 U. S. Cust. App. 283.

Vol. II, p. 879, par. 648.

Reeds made from rattan.—See under this title, vol. 2, p. 769, par. 173.

Vol. II, p. 885, sec. IV, par. J, subsec. 5.

Construction.—The obvious intent of subsection 5 of paragraph J of section 4 was to favor the shipping industry of this country, and whatever of ambiguity may be found in it must be resolved so as to give effect to that intention. The interchangeable use in the subsection of the words "materials" and "articles" denies to it uniform expression unless "articles" be construed to mean such articles as are materials used in further manufacture. To hold that a completed marine engine is "materials" and can be imported free of duty would defeat the obvious intent of the subsection. *U. S. v. Outerbridge*, (1916) 7 U. S. Cust. App. 223.

A trawl is not a part of the vessel which draws it, but is equipment for the vessel. *Otte v. U. S.*, (1916) 7 U. S. Cust. App. 166.

Trawls imported for repairs are not admissible free of duty as original equipment of American vessels under this subsection or as repair parts of such vessels under subsection 6. *Otte v. U. S.*, (1916) 7 U. S. Cust. App. 166.

Marine engine.—A marine engine is not admissible free of duty under subsection 5 of paragraph J of section 4, as shipbuilding materials or articles, but is dutiable under paragraph 165 as a steam engine. *U. S. v. Outerbridge*, (1916) 7 U. S. Cust. App. 223.

Vol. II, p. 885, sec. IV, par. J, subsec. 6.

Wireless apparatus imported to replace inefficient apparatus upon American ships is admissible free of duty as repairs for American vessels under this section. *U. S. v. Kennedy*, (1917) 7 U. S. Cust. App. 442.

Vol. II, p. 886; sec. IV, par. J, subsec. 7.

Discount—*American vessels*.—Goods imported in American vessels are entitled to 5 per cent discount under this section. *Straus v. U. S.*, (1917) 7 U. S. Cust. App. 414.

Belgian vessels.—Goods imported in Belgian vessels are entitled to 5 per cent discount. *Straus v. U. S.*, (1917) 7 U. S. Cust. App. 414.

Dutch vessels.—Goods imported in vessels belonging to Holland or the Netherlands are entitled to the 5 per cent discount under section 4, paragraph J, subsection 7. *Ialer v. U. S.*, (1916) 7 U. S. Cust. App. 178.

Reciprocity treaties.—The 5 per cent tariff discount given to merchandise imported in American bottoms by this section with its proviso, is inoperative so long as the present reciprocity treaties with foreign countries remain in force. *U. S. v. M. H. Pulaaki Co.*, (1917) 243 U. S. 97, 37 S. Ct. 346, 61 U. S. (L. ed.) 617.

Vol. II, p. 960, sec. 2630.

Special deputy collector.—The powers and duties of collectors of customs are equally vested in their special deputies; so the special deputies' right and power to liquidate and reliquidate are without question. *Vitelli v. U. S.*, (1916) 7 U. S. Cust. App. 243.

Vol. II, p. 1019, sec. III, par. I.

Construction—*Entered higher than market value.*—The addition by the importer of a certain sum to the invoice value, with a certificate to the effect that the addition was made to make market value as indicated by the appraiser's advance in similar cases and that his action was taken pursuant to paragraph I of section 3, was not a compliance with the paragraph, since it required him to certify that the entered value was higher than the market value and provided that his action should appear to be taken after due diligence and inquiry. *Vandiver v. U. S.*, (1918) 7 U. S. Cust. App. 338.

Construction.—Where both importer and appraiser arrived at the market value by deducting inland freight and shipping charges from the value at the foreign port, and a greater deduction was made by the importer than by the appraiser, such action resulting in a larger appraised than entered value, the additional duty provided by this paragraph was justly imposed. *U. S. v. Philips Co.*, (1917) 7 U. S. Cust. App. 497.

Clerical error—*Interlined invoice.*—Where the total of the itemized invoice showed a lower value and an interlineation in the invoice showed a higher one and the importers entered the merchandise at the lower figure, "manifest clerical error" did not appear, and the additional duty provided for by the paragraph was justly imposed. *Oberle v. U. S.*, (1917) 7 U. S. Cust. App. 404.

Undervaluation.—When zinc ore was entered, in accordance with the estimate on the consular invoice as being 40 per cent zinc, and the subsequent official assay showed 46.6 per cent zinc, there was no undervaluation such as would subject it to the "additional duty" provisions of paragraph I of section 3. But when the entry stated the market value of the zinc in a ton of 40 per cent zinc

ore to be less than the consular invoice showed, less than the price stated for it in the contract under which it was purchased, and less than the true market value as found by the appraiser, there was. *National Zinc Co. v. U. S.*, (1916) 7 U. S. Cust. App. 145.

Vol. II, p. 1062, sec. III, par. K.

Construction—*appraisal.*—Under paragraph K of section 3, authorizing the appraiser to use "all reasonable ways and means" in his power to "ascertain, estimate, and appraise" the actual market value and wholesale price of dutiable merchandise at the time of its exportation to the United States, in the principal markets of the country whence the same has been imported, the appraiser is justified in arriving at his conclusion by deducting from the value of the merchandise at the port the shipping and freight charges from the place where the shipment originated—the principal market for such merchandise—to the port. Such action is not an appraisal of the freight and shipping charges, but a convenient method of finding the value at the place where the shipment originated. *U. S. v. Philips Co.*, (1917) 7 U. S. Cust. App. 497; *distinguishing U. S. v. Spingarn*, (1913) 5 U. S. Cust. App. 2.

Vol. II, p. 1064, sec. III, par. L.

Construction.—The provision in paragraph L of section 3, "all general expenses to be estimated at not less than 10 per centum," does not authorize appraising officers to fix general expenses at any sum greater than 10 per cent of the total expenses which to them may seem proper and without regard to the actual general expenses. *Austin v. U. S.*, (1916) 7 U. S. Cust. App. 186.

"Cost of production"—*Phonograph records.*—The compensation paid to talent for the production of phonograph records is an element in the "cost of production" of such records under this paragraph. *Austin v. U. S.*, (1916) 7 U. S. Cust. App. 186.

General expenses.—Money expended in the production of phonograph records for "locating room, moving and hire of piano, wages of boy at laboratory, and rent of laboratory, furniture and curtains" is within the category of "personal expenses" under this paragraph. *Austin v. U. S.*, (1916) 7 U. S. Cust. App. 186.

Vol. II, p. 1065, sec. III, par. M.

Construction—*Reappraisal.*—This paragraph confers ultimate and exclusive appellate jurisdiction to appraise upon the board of three general appraisers to

which the case is assigned; and the decision of that body becomes, by the precise language of the statute itself, final and conclusive on all parties, and is not subject to review by appeal. *U. S. v. Loeb, etc., Co.*, (1917) 7 U. S. Cust. App. 380.

Jurisdiction—Unsigned appeal to re-appraisement.—This court has no jurisdiction to review the action of the Board of General Appraisers in dismissing an appeal to re-appraisement on the ground that the appeal was not signed. *U. S. v. Loeb, etc., Co.*, (1917) 7 U. S. Cust. App. 380.

Vol. II, p. 1071, sec. III, par. N.

Board's jurisdiction.—The addition to the tariff law by paragraph N of section 3, of the words "or upon merchandise on which duty shall have been assessed" extends the jurisdiction of the Board of United States General Appraisers to all decisions of collectors of customs as to the rate and amount of duties whether or not the merchandise was imported and whether or not provision is made for its legal entry. It is any and every decision of a collector as to the rate and amount of duties that may be protested and reviewed, and not only such a decision as to imported or legally entered merchandise or as to goods for which a certain entry is by statute provided. *U. S. v. Mandel*, (1917) 7 U. S. Cust. App. 476.

Pleading—Protest filed before liquidation.—This paragraph expressly inhibits the filing of a protest before liquidation. Such prematurely filed protest is ineffective. *U. S. v. Mandel*, (1917) 7 U. S. Cust. App. 476.

Vol. II, p. 1136, sec. 21.

Construction.—A liquidation by the collector pending appeal to reappraisement is not voidable merely, but void. Such action does not constitute a "settlement of duties" within the purview of this section providing that a settlement of duties shall be final a year after entry in the absence of fraud and in the absence of protest. *Stubbs v. U. S.*, (1917) 7 U. S. Cust. App. 399.

"Absence of Fraud."—The statute makes the liquidation final "in the absence of fraud." This does not necessitate a finding of fraud by the collector to justify relinquishment, but directs him not too reliquidate in "the absence of fraud." If he suspects fraud, he cannot say that fraud is absent. A well-founded suspicion of fraud is sufficient to move him to reliquidation. *Vitelli v. U. S.*, (1916) 7 U. S. Cust. App. 243.

The words "in the absence of fraud and in the absence of protest by the owner, im-

porter, agent, or consignee" do not restrict the fraud to the owner, importer, agent, or consignee. *Vitelli v. U. S.*, (1916) 7 U. S. Cust. App. 243.

Reliquidation—Goods beyond collector's control.—The power of the collector to reliquidate when the goods have gone beyond his possession or control has been administratively, legislatively, and judicially recognized from the earliest time. *Vitelli v. U. S.*, (1916) 7 U. S. Cust. App. 243.

Collector's decision.—The law restricts a collector's findings to rate and amount of duty. He can make no conclusive finding as to fraud or anything else than rate and amount of duty. A reliquidation involves nothing except a different finding as to rate and amount of duty. *Vitelli v. U. S.*, (1916) 7 U. S. Cust. App. 243.

Within year from entry.—The collector's power to reliquidate within a year after entry has received uniform administrative, legislative, and judicial recognition prior to, and since, the passage of this Act. *Vitelli v. U. S.*, (1916) 7 U. S. Cust. App. 243.

After year from entry in case of protest.—The collector's power to reliquidate after the expiration of a year from entry in case of protest has received uniform administrative, legislative and judicial recognition prior to, and since, the passage of this Act. *Vitelli v. U. S.*, (1916) 7 U. S. Cust. App. 243.

Evidence—burden of proof.—In the trial before the board of general appraisers of a protest against a reliquidation made more than a year after entry, the legal presumption is, as in all cases, that the collector of customs acted within the powers conferred upon him by law, and the burden is on the protestant to show the invalidity of the reliquidation. *Vitelli v. U. S.*, (1916) 7 U. S. Cust. App. 243.

In the trial before the board of general appraisers of a protest against a reliquidation made more than a year after entry, evidence that the goods had been bought and sold by importers at weights greater than the entered ones, is sufficient to establish a *prima facie* case of fraud and put upon the protestants the burden of overcoming it. *Vitelli v. U. S.*, (1916) 7 U. S. Cust. App. 243.

Due process of law.—The customs administrative procedure, in case of reliquidation for fraud more than one year after entry, gives the importer ample notice and abundant opportunity to defend. The record shows that such notice and opportunity were had in these cases. *Vitelli v. U. S.*, (1916) 7 U. S. Cust. App. 243.

Liquidation pending appeal.—The collector has no power to liquidate pending appeal to reappraisement. *Stubbs v. U. S.*, (1917) 7 U. S. Cust. App. 399.

Vol. II, p. 1141, sec. III, par. Y.

Clerical error.—An understatement of the market value per ton of zinc ore, varying from the consular invoice and from the price stated in the contract for purchasing it, the arithmetical extension in the entry being correctly made upon

the basis of the declared price per ton, declared number of tons, and declared percentage of zinc content, is not manifest clerical error within the meaning of paragraph Y of section 3. *National Zinc Co. v. U. S.*, (1916) 7 U. S. Cust. App. 145.

DISCRIMINATING LAWS AND DUTIES

Vol. III, p. 81, par. E.

Construction.—The plain, explicit, and unequivocal purpose of paragraph E is that whenever a foreign power or dependency or any political subdivision of a government shall give any aid or any advantage to exporters of goods imported into this country therefrom, whereby they may be sold for less in competition with our domestic goods, the duties on them shall be increased to that extent. It is the result of such aid or advantage that Congress seeks to countervail, regardless of whatever name or in whatever manner or form or for whatever purpose it was

given. Whether the thing done be called "allowance," "bonification," "bounty," "grant," "drawback," or what, matters not. The question is whether or not the result would be to admit the merchandise to our markets at a lower cost price. *Nicholas v. Shaw*, (1916) 7 U. S. Cust. App. 97.

Countervailing of British "allowance."—An "allowance" paid by the United Kingdom to the exporter of spirits is a "bounty or grant" within the meaning of paragraph E and justifies the imposition of the countervailing duty provided for by the paragraph. *Nicholas v. Shaw*, (1916) 7 U. S. Cust. App. 97.

ELECTIONS

Vol. III, p. 122, sec. 7.

Primary laws.—This Act recognizing primary elections and limiting the expenditures of candidates for senator in connection with them is not in effect an adoption by Congress of all state primary laws. *U. S. v. Gradwell*, (1917) 243 U. S. 476, 37 S. Ct. 407, 61 U. S. (L. ed.) 857.

Vol. III, p. 126, sec. 1.

Primary election.—The word "election" as used without qualification, refers to a general election and not to a primary election. *U. S. v. O'Toole*, (S. D. W. Va. 1916) 236 Fed. 993. See also *U. S. v. Gradwell*, (1917) 243 U. S. 476, 37 S. Ct. 407, 61 U. S. (L. ed.) 857.

EVIDENCE

Vol. III, p. 172, sec. 863.

Depositions when taken—Rule 47 of the federal equity rules.—The rule would seem to be that to take depositions under this section within the time provided by equity rule 47, it is not necessary that previous authorization be obtained from the court; in other words, that equity rule 47 was not intended to vary section 863, by imposing as a prerequisite to the taking of testimony under that section, the previous order or authorization of the court. But if the depositions are not taken within the time limited by rule 47,

they will be suppressed, unless previous permission from the court to take them has been obtained. *Audiffren Refrigerating Mach. Co. v. General Electric Co.*, (D. C. N. J. 1917) 245 Fed. 783.

In *Block v. Arrowsmith Mfg. Co.*, (D. C. N. J. 1917) 247 Fed. 775, the question before the court was whether or not plaintiff, long after the time had elapsed for taking and filing depositions under rule 47, and after the case had been placed on the trial calendar for two terms, may take depositions by notice to defendant, or its counsel, without "some strong rea-

son shown by affidavit" therefor, and without application to court for an order to do so. The court said: "Depositions under such circumstances may not be taken. Before depositions under such circumstances may be taken, the litigant must, upon application to court, show by affidavits some strong reason why the testimony of the witnesses cannot be had orally on the trial, and why their depositions have not been taken before. This the plaintiffs have not done, and so far as the court is informed there is no reason why the depositions were not taken within the time required by the equity rules."

Witness outside territorial limits of district—Equity rule 46.—Equity rule 46 (198 Fed. XXXI, 115 C. C. A. XXXI), providing that testimony shall be taken by oral examination in open court, does not deprive the court of power to take depositions, in a proper case, under the provisions of this section. *Jennings v. Smith*, (S. D. Ga. 1917) 244 Fed. 836.

Re-examination of witness.—The same witness may be examined *de bene esse*, under this section, more than once in suits in equity as well as in actions at law. Of course, the court may restrain the taking of depositions of witnesses who have been previously examined when the purpose of examining them again is to harass or oppress. *Audiffren Refrigerating Mach. Co. v. General Electric Co.*, (D. C. N. J. 1917) 245 Fed. 783.

Notice.—Where appellants had due notice of the taking of a deposition under this section, but did not appear, and there was no examination of witnesses, they cannot complain that they had no opportunity for objection, or that they were not notified of the filing of the depositions, it not appearing that by the local law where the deposition was used, that they were entitled to such notice of filing. *The D. J. Sawyer*, (C. C. A. 1st Cir. 1916) 236 Fed. 913, 150 C. C. A. 175.

Motion to vacate.—If the depositions are not taken in conformity with the law, the court has power, on motion, to vacate the notices in advance of the taking of the testimony. *Audiffren Refrigerating Mach. Co. v. General Electric Co.*, (D. C. N. J. 1917) 245 Fed. 783. *Compare Kline v. Liverpool, etc., Ins. Co.*, (S. D. N. Y. 1911) 184 Fed. 969, wherein the court declined to vacate the notice of the taking of depositions, considering that the plaintiff (who moved to vacate) would be protected by a motion to suppress the depositions after they had been taken.

Vol. III, p. 212, sec. 905.

Full faith and credit—Generally.—Except for the question of jurisdiction the judgement of a court of another state is put upon the same footing as a domestic judgment, and no inquiry can be made as

to the accuracy of the record or the conduct of the trial. *Lucas v. Vulcan Iron Works*, (M. D. Pa. 1916) 233 Fed. 823.

Foreign judgment—Authentication.—In *Shufeldt v. Mound City Bank*, (Okla. 1916) 160 Pac. 923, the certified copy of a foreign judgment, was made up of the petition, summons, with the return of the sheriff thereon, answer of the defendant and the judgment of the court. It did not show that the judgment was signed and filed in the court where the judgment was rendered. The certificate of the clerk showing that the judgment was of record in his office, was held to be a sufficient authentication.

Certificate of judge.—A copy of a judgment of a state court, certified by the clerk alone without the certificate from the judge of the court to the effect that the attestation by the clerk is in due form, is not admissible in evidence. *Arndt v. Burghardt*, (165 Wis. 312, 1917) 162 N. W. 317.

Authentication—Exclusiveness of statutory method.—A state may adopt any other method of authenticating records admitted in their own courts. It may prescribe a less requirement but it cannot require more. *Block v. Schafer*, (Okla. 1917) 162 Pac. 456.

Vol. III, p. 225. [Act of March 9, 1892]

Following state practice.—Where it appears that a considerable saving will be effected thereby, a motion to take depositions under the state practice will be granted, since if the complainant is not fully protected, depositions could afterwards be taken under R. S. sec. 863. *Cook v. Flagg*, (S. D. N. Y. 1916) 233 Fed. 713.

Vol. III, p. 227. [Act of Feb. 26, 1913.]

Admissibility of writing for comparison. Handwriting admitted to be used as a basis of comparison under the Act of Congress, is not required to be proven genuine in any other way than is any other document offered in evidence. Proof of genuineness, under the Act of Congress, may arise from inference, providing the inference is convincing beyond a reasonable doubt, when the case is a criminal one. Direct evidence is a mode, but not the exclusive mode, of proof. Inference from the admitted facts that only one person had access to a paper, originally blank, and on which writing was afterwards discovered, that such person was the writer, would be irresistible and sufficient. It cannot be said that the genuineness of a writing, for use as a basis of comparison under this Act must be proven by any peculiar mode of proof, or that if cannot be inferred from possession, where the

circumstances and character of the possession and of the instrument itself are persuasive enough of its authorship. The defendant's constitutional privilege of refraining from giving evidence against himself by word of mouth, or by furnishing specimens of his handwriting, is an additional reason for not construing the Act so as to require a different degree or kind of proof than that ordinarily required to prove the genuineness of handwriting. *Dean v. U. S.*, (C. C. A. 5th Cir. 1917) 247 Fed. 568, 158 C. C. A. 538.

The principle of admitting a memoran-

dum book, diary or other writing for the purposes of comparison should apply only to the class of documents or books which are customarily and of common knowledge kept personally by the owner. *Dean v. U. S.*, (C. C. A. 5th Cir. 1917) 246 Fed. 568, 158 C. C. A. 538.

It is proper under this Act in order to prove a signature, to admit for comparison, documents which witnesses testify they have seen signed by the one whose signature is questioned. *Bowlers v. U. S.*, (C. C. A. 9th Cir. 1917) 244 Fed. 641, 157 C. C. A. 89.

EXECUTION

Vol. III, p. 232, sec. 989.

Application of section.—This section is in aid of the collector only who received and turned over the tax to the Treasury Department. It has no application to the

ucceeding collector. *Roberts v. Lowe*, (S. D. N. Y. 1916) 236 Fed. 604; *Philadelphia, etc., R. Co. v. Lederer*, (E. D. Pa. 1917) 239 Fed. 184.

EXECUTIVE DEPARTMENTS

Vol. III, p. 250, sec. 161.

Regulations of Postmaster-General—Mail matter as property—Designating depository.—Mail matter, while continuing as such, is "property" appertaining to the Post Office Department and the postmaster is authorized to prescribe requirements, not inconsistent with law, for its custody and preservation. He may determine what shall be regarded as a depository for mail, and the depository so designated becomes an authorized depository as a receptacle for the receipt

or delivery of mail matter. *Pakas v. U. S.*, (C. C. A. 2d Cir. 1917) 240 Fed. 350, 153 C. C. A. 276.

Vol. III, p. 255, sec. 177.

Assistant head of departments—Assistant Attorney General.—This section is cited generally in *May v. U. S.*, (C. C. A. 8th Cir. 1916) 236 Fed. 495, 149 C. C. A. 547, on the question of the power of an Assistant Attorney General to take part in a grand jury investigation.

EXTRADITION

Vol. III, p. 285, sec. 5278.

- VI. Fugitive from justice.
- VIII. "Charged" with crime.
- XII. Warrant of arrest.

VI. FUGITIVE FROM JUSTICE (p. 288)

Who is "a fugitive from justice."—The law is well settled that, if the alleged fugitive was in the demanding state at the time when the offense was committed, he is, whenever he is thereafter found in

another state, presumed to be a fugitive from justice, no matter for what purpose or reason nor under what circumstances he left the state. *Ex parte Montgomery*, (S. D. N. Y. 1917) 244 Fed. 967.

VIII. "CHARGED" WITH CRIME (p. 294)

What constitutes "charging" with crime—Question of law.—The question as to whether the person demanded and detained on an extradition warrant is substantially charged with a crime is a ques-

tion of law, which on the face of the papers, is open to inquiry on writ of habeas corpus. *Ex parte Wildman*, (Okla. Crim. 1917) 168 Pac. 246.

XII. WARRANT OF ARREST (p. 301)

Effect of warrant as *prima facie* evidence of legal prerequisites.—The extradition warrant is *prima facie* proof, but not conclusive proof, that the requirements of the statute were complied with before the issuance of the warrant. *Ex parte Wildman*, (Okla. Crim. 1917) 168 Pac. 246.

Vol. III, p. 313, sec. 5.

"Similar purposes"—*Under treaty*.—Where extradition is demanded by a foreign country, under international treaty, the words "similar purposes" when limited to an attempt to prove a criminal charge refer to the crimes so denominated in the treaty and not to an extradition hearing in the country making the demand. *In re Lincoln*, (E. D. N. Y. 1915) 228 Fed. 70.

FINES, PENALTIES AND FORFEITURES

Vol. III, p. 332, sec. 5292.

Summary investigation — Conditions precedent.—The imposition of a fine or forfeiture is not a necessary condition precedent to the filing of a petition for summary investigation. The words in this section "merchandise which has become the subject of seizure" refer to property taken at the outset of prospective litigation to follow by the filing of a libel by the government. It will be noted that the language of the statute does not limit the prayer for relief to a remission

or mitigation of the fine, etc., but, on the contrary, refers to the alleged violation of the customs laws by any person who shall be charged with having incurred a fine. Thus it will be seen that the act under consideration grants to a person interested the right to present his petition for a summary hearing just as soon as the government makes a charge against him, and does not require that he wait until the fines shall be adjudicated or a forfeiture admitted. *In re Beloochistan Rug Weaving Co.*, (S. D. N. Y. 1917) 244 Fed. 283.

FOOD AND DRUGS

Vol. III, p. 360, sec. 2.

Information — *Generally*.—On information bearing the signature of the district attorney, and attached to which and made a part of it, are affidavits sworn to before notaries public, is sufficient to support a judgment. *Abbott Bros. Co. v. U. S.*, (C. C. A. 7th Cir. 1917) 242 Fed. 751, 155 C. C. A. 339.

And where no warrant of arrest is sought, an information signed by the district attorney is sufficient without any verification and without supporting affidavits. In such case it is not necessary for the district attorney who signs the information in his official character to assert in the body of that document that he informed the court upon his oath as a government official of the facts therein set forth. It will be presumed that he acted on his oath as an officer of the government. *Abbott Bros. Co. v. U. S.*, (C. C. A. 7th Cir. 1917) 242 Fed. 751, 155 C. C. A. 339.

Waiver of defects.—Defects in the verification of an information or in the acknowledgment of its supporting affi-

davits, are waived if not raised by suitable objection before trial. *Abbott Bros. Co. v. U. S.*, (C. C. A. 7th Cir. 1917) 242 Fed. 751, 155 C. C. A. 339.

Sufficiency of information alleging misbranding as to curative effects.—An information was not insufficient in law because it failed to show that the alleged misrepresentations as to the curative effects of the article were in the "ultimate container," that is to say, in the package as it reached the ultimate consumer. So, where the information alleged that the shipment consisted of "certain packages" and that the packages contained the circular or pamphlet later described therein; that one of the alleged misrepresentations appeared "on the label of the carton aforesaid" and that the other was "included in the circular or pamphlet aforesaid" the information should be interpreted to mean that the misrepresentations were intended to accompany the bottles into the hands of the consumer. *Simpson v. U. S.*, (C. C. A. 6th Cir. 1917) 241 Fed. 841, 154 C. C. A. 543.

Vol. III, p. 371, sec. 7.

Adulteration—*Imitation grape essence.*
—A bottled article labeled "Compound Ess Grape" but which in fact contained nothing from grapes and was a mere imitation artificially prepared, it was held, must be deemed adulterated within the general terms of this section. *U. S. v. Schider*, (1918) 246 U. S. 519, 38 S. Ct. 369, 62 U. S. (L. ed.) 863.

Vol. III, p. 379, sec. 8.

Validity of state statutes on subject of misbranding.—Since Congress has not covered the field of disclosure of the ingredients of a food product designed for human consumption and moved or moving in interstate commerce from one state into another state for sale there the several states in the exercise of the police power are at liberty and free to legislate on that subject, and lawfully provide for a disclosure of the name of the ingredients entering into the composition or compounding of such food mixtures, so long as the disclosure of the formula for compounding such food mixture is not required. *Crescent Mfg. Co. v. Wilson*, (N. D. N. Y. 1916) 233 Fed. 282, following *Savage v. Jones*, (1912) 225 U. S. 501, 32 S. Ct. 715, 56 U. S. (L. ed.) 1182, cited in the original note.

Misleading statements as to curative effects—*Issues.*—In a proceeding to forfeit drugs on the ground that they were misbranded as to their curative effects, the issues under this Act, resolve them-

selves into two questions: First, were the statements regarding the curative or therapeutic effects false; and second, were they fraudulent. *Eleven Gross Packages, etc.*, *v. U. S.*, (C. C. A. 3d Cir. 1916) 233 Fed. 71, 147 C. C. A. 141.

Misbranding—*Imitation grape essence.*
—A bottled article labeled "Compound Ess Grape" but which in fact contained nothing from grapes and was an imitation artificially manufactured was held misbranded. *U. S. v. Schider*, (1918) 246 U. S. 519, 38 S. Ct. 369, 62 U. S. (L. ed.) 863.

Vol. III, p. 392, sec. 10.

Shipment for use by consignee as raw material.—For a case, wherein the remedy in rem provided by this section was invoked, where adulterated butter had been shipped, not for sale, but intended for use by the consignee in the bakery business, see *U. S. v. Nine Barrels of Butter*, (S. D. N. Y. 1917) 241 Fed. 499, following *Hipolite Egg Co. v. U. S.*, (1911) 220 U. S. 45, 31 S. Ct. 364, 55 U. S. (L. ed.) 364, cited in the original note.

Libel—*Sufficiency.*—A libel to condemn cases of "Buffalo Lithia Water" which alleges in effect that the seized property is branded, labeled and sold as lithia water, when in fact it is not lithia water and that by reason of such branding the public is deceived and misled, is sufficient. Particular characterization of the water as a mineral water or a spring water is not necessary. *Goode v. U. S.*, (1915) 44 App. Cas. (D. C.) 162.

GAME ANIMALS AND BIRDS

Vol. III, p. 414, sec. 1.

Materiality in state prosecution.—In *State v. Carey*, (S. D. 1917) 165 N. W. 539, the appellant was tried and convicted upon an information charging him with the shipment of 15 wild ducks to a point within the state in violation of a state statute making it unlawful to ship, or caused to be shipped, wild ducks by any private or common carrier to any person within or without the state. Several reasons why the conviction was illegal were urged by appellant, but the principal ground relied upon was that the Act of Congress, commonly known as the federal Migratory Game Bird Law, places all migratory game birds under federal

protection, and thereby suspended all state laws in regard to the same subject; while, on the other hand, it was contended by the Attorney-General that the said federal Act is unconstitutional and did not have the effect claimed for it by the appellant. The court said: "But it nowhere in the record appears that the ducks in question were killed in violation of the law [the federal act] or of any regulation made thereunder. So far as appears from the record, said ducks were lawfully killed and lawfully in the possession of the defendant at the time of the alleged shipment. Therefore it is immaterial to the issues in this case whether the said federal act is constitutional or not."

HABEAS CORPUS

Vol. III, p. 427, sec. 751.

III. Scope of writ.

1. Generally.

IV. As substitute for writ of error.

1. Rule stated.

7. Indictment.

VIII. Review of proceedings of special tribunals.

2. Court-martial.

3. Immigration.

XI. Enlistment of minors in army and navy.

III. SCOPE OF WRIT.

1. Generally (p. 430)

Inquiry as confined to jurisdiction.—If a court has jurisdiction of the case, the writ of habeas corpus cannot be employed to retry the issues, whether of law, constitutional or other, or of fact. *Collins v. Morgan*, (C. C. A. 8th Cir. 1917) 243 Fed. 495, 156 C. C. A. 193.

IV. AS SUBSTITUTE FOR WRIT OF ERROR

1. Rule Stated (p. 431)

Rule against use as substitute.—It is a familiar rule that a writ of habeas corpus cannot be used as a writ of error, but only for the consideration of fundamental and jurisdictional questions. *Collins v. Morgan*, (C. C. A. 8th Cir. 1917) 243 Fed. 495, 156 C. C. A. 193.

7. Indictment (p. 434)

Duplicity.—A double charge in a single court of an indictment is no ground for discharge on habeas corpus. *Collins v. Morgan*, (C. C. A. 8th Cir. 1917) 243 Fed. 495, 156 C. C. A. 193.

VIII. REVIEW OF PROCEEDINGS OF SPECIAL TRIBUNALS

2. Court-martial (p. 443)

Rule stated.—It is settled law that, if a military tribunal has jurisdiction to try a person charged with an offense against military law, the civil courts cannot interfere by writ of habeas corpus. *Ex parte Dostal*, (N. D. Ohio 1917) 243 Fed. 664.

3. Immigration (p. 443)

Defects in warrant of deportation.—Where a writ of habeas corpus is sued out after the hearing and the issuing of the warrant of deportation, on objection to the original warrant, as that it was signed by the Assistant Secretary of Labor and not by Secretary of Labor, comes too late, as the only object of the writ is to ascertain whether the petitioner can lawfully be detained in custody. *Moy Wing Sun v. Prentiss*, (C. C. A. 7th Cir. 1916) 234 Fed. 24, 148 C. C. A. 40.

XI. ENLISTMENT OF MINORS IN ARMY AND NAVY (p. 448)

Effect of enlistment—Release.—It is settled law that a minor, who enlists without the written consent of a parent or guardian, when such consent is required, becomes a soldier. His enlistment is not void, nor is it voidable in any event by him. He may be released from the service by a timely application of the parent or guardian having a superior right to his custody or control. But this application must be made with reasonable diligence, after the parent or guardian has acquired knowledge of the actual enlistment, and before an offense has been committed by him. After an offense has been committed by the minor against the military law, and especially after he has been placed under arrest and charges have been preferred against him, it is too late for the parent or guardian to oust the jurisdiction of the military authorities by an application to the civil courts for a writ of habeas corpus. *Ex parte Dostal*, (N. D. Ohio 1917) 243 Fed. 664.

Habeas corpus lies to obtain the discharge of minors who have fraudulently enlisted in the United States army or navy, but the merits of the case will not be inquired into. *Hoskins v. Dickerson*, (C. C. A. 5th Cir. 1917) 239 Fed. 275, 152 C. C. A. 263, Ann. Cas. 1917C 776, L. R. A. 1917D 1056.

Vol. III, p. 449, sec. 753.

I. Introductory.

V. Order, process or decree.

I. INTRODUCTORY (p. 449)

General principles.—Under the terms of this section, in order to entitle the applicant to the relief sought under writ of habeas corpus, it must appear that he is held in custody in violation of the Constitution of the United States. Second. That he cannot have relief on habeas corpus if he is held in custody by reason of conviction upon a criminal charge before a court having jurisdiction over the subject matter of the offense, the place where it was committed and the person of the prisoner. Third. Mere errors of law, however serious, committed by the court in the exercise of its jurisdiction, cannot be reviewed by habeas corpus. The writ cannot be employed as a substitute for a writ of error. Fourth. A criminal prosecution in the courts of a state, based on a law not repugnant to the Federal Constitution and conducted according to the settled course of proceedings under the law of the state, so long as it includes notice and a hearing, or an

opportunity to be heard, before a court of competent jurisdiction, according to established modes of procedure, is "due process of law" in the constitutional sense. Fifth. The federal courts cannot review irregularity or erroneous rulings upon the trial, however serious, and habeas corpus will lie only where the judgment under which the prisoner is detained is shown to be absolutely void for want of jurisdiction in the court, either because such jurisdiction was absent at the beginning, or was lost in the course of the proceedings. Sixth. In determining the question whether the jurisdiction of the court was lost, the inquiry must not be confined to the proceedings and judgment of the trial court. The proceedings in the appellate tribunal are to be regarded as part of the process of law, and are to be considered in determining any question of deprivation of life or liberty under the Federal Constitution. Seventh. Questions arising under the due process clause of the fourteenth amendment, instead of involving merely the jurisdiction of some court, in a broad sense involve the power and authority of the state itself. The prohibition is addressed to the state itself, and if a violation be threatened by one agency of the state, but prevented by another agency of higher authority, there is no violation by the state; and as the state determines what courts shall be established for the trial of offenses against her laws, it follows that the question whether a state is depriving a prisoner of his liberty without due process of law, under a law not violative of the Federal Constitution, cannot be determined ordinarily, with fairness to the state, until the conclusion of the course of justice in its courts. Eighth. Under the liberal procedure on habeas corpus, a prisoner in custody pursuant to the final judgment of a state court may have a judicial inquiry in the federal courts into the very truth and substance of the causes of his detention, and, if necessary, to look beyond the record of his conviction sufficiently to test the jurisdiction of the state court to proceed to judgment against him. But the court should take into consideration the entire course of the proceedings in the state courts, and not merely a single step in the proceedings, and that consideration must be given, not only to the averments of the petition, but to the proceedings which the petition attacks. *Filer v. Steele*, (W. D. Pa. 1915) 228 Fed. 242, summarized from the opinion by Pitney, J., in *Frank v. Mangum*, (1915) 237 U. S. 309, 35 S. Ct. 582, 59 U. S. (L. ed.) 969.

V. ORDER, PROCESS OR DECREE (p. 452)

Soldiers.—A federal court has power to issue a writ of habeas corpus for the purpose of an inquiry into the cause of

detention of a prisoner held by a state to answer to a criminal charge, where it is alleged by the petitioner that the act charged, as a crime was committed by the prisoner in the performance of his duty as a soldier of the United States. It has authority to determine summarily, as a fact, whether or not such allegation is true, and, if found to be true, to discharge the prisoner on the ground that the state is without jurisdiction to try him for such act. *In re Wulzen*, (S. D. Ohio 1916) 235 Fed. 362, following *U. S. v. Lipsett*, (W. D. Mich. 1907) 156 Fed. 65, cited in the original annotation.

But the writ should issue only in urgent cases, since the general jurisdiction in time of peace, of the civil courts of a state over persons in the military service of the United States who are accused of a crime, or an offense against the person of a citizen, committed within the state, is not denied. *In re Wulzen*, (S. D. Ohio 1916) 235 Fed. 362.

Vol. III, p. 469, sec. 761.

"Dispose of the party as law and justice require"—*Military enlistment.*—Where habeas corpus is brought by a parent to obtain the custody of a minor child for the purpose of avoiding his enlistment in the national guard, the court will not order his surrender to the parent, where such minor was charged with the commission of military offenses while he was a soldier. The election by the father, evidenced by the writ of habeas corpus, to avoid his son's enlistment, terminated the right of the military authorities to detain the latter under the enlistment, but it did not terminate the right of such authorities to continue their custody of the minor for the time reasonably required for the exercise of the military jurisdiction brought into play by duly made charges of the commission of military offenses by the minor while he was a soldier. *Hoskins v. Dickerson*, (C. C. A. 5th Cir. 1917) 239 Fed. 275, 152 C. C. A. 263, Ann. Cas. 1917C 776, L. R. A. 1917D 1056. See also *Ex parte Dostal*, (N. D. Ohio 1917) 243 Fed. 664.

Vol. III, p. 475, sec. 763.

Superseded—Appeals to Circuit Court of Appeals.—In *Hoskins v. Funk*, (C. C. A. 5th Cir. 1917) 239 Fed. 278, 152 C. C. A. 266, the court said: "It is not an order of the District Judge in vacation which is made subject to review by this court by section 129 of the Judicial Code. No statute has been found which purports to confer on this court the jurisdiction which section 763 of the Revised Statutes conferred on the Circuit Court to review 'the final decision of any court, justice or judge inferior to the circuit court upon

an application for a writ of habeas corpus or upon such writ when issued.' The conclusion reached in the case of *Webb v. York*, 74 Fed., 753, 21 C. C. A. 65, that, notwithstanding the absence of such a statute, the Circuit Courts of Appeals have in some way succeeded to the jurisdiction which the statute just quoted conferred on another court, is one in which we are unable to concur. The reasoning by which that conclusion was reached does not seem to us to be convincing. We have found no statute having the effect of conferring upon this court appellate jurisdiction to review such an order made by a District Judge in vacation as the appeal in this case seeks to present for review."

Vol. III, p. 476, sec. 764.

Effect of Act of March, 1891, creating Circuit Courts of Appeals.—The right of appeal direct to the Supreme Court exists in habeas corpus cases where a question is involved under section 5 of the Circuit Court of Appeals Act of 1891, now constituting Judicial Code, § 238, vol. 5, p. 794. Otherwise there is no such right of direct appeal, especially as the abolishment of the Circuit Courts by Judicial Code, § 289, vol. 5, p. 1082, "removed the last vestige of authority for an appeal" under R. S. sec. 764. *Horn v. Mitchell*, (1917) 243 U. S. 247, 37 S. Ct. 293, 61 U. S. (L. ed.) 700,

HOSPITALS AND ASYLUMS

Vol. III, p. 601, sec. 4844.

Indigency.—Indigency is a question of fact. To be indigent does not mean that a person must be a pauper. An insane person with insufficient estate to pay for his maintenance in the hospital for the insane, after providing for those who could claim his support, is indigent within the terms of the Revised Statutes. *Depue v. District of Columbia*, (1916) 45 App. Cas. (D. C.) 54, Ann. Cas. 1917E 414.

And if a person can pay only "a portion, but not the whole," of the expense of maintenance, he is an indigent person within the provisions of this section. *Depue v. District of Columbia*, (1916) 45 App. Cas. (D. C.) 54, Ann. Cas. 1917E 414.

Vol. III, p. 613, sec. 1.

Purpose of Act.—Interpreting this Act, the court in *Baker v. District of Columbia*, (1912) 39 App. Cas. (D. C.) 42, speaking through Robb, J., said: "We think Congress thereby intended to declare a change in the relation of the indigent insane, whereby maintenance thereafter received by them should be received upon the condition that they pay therefor when able; in other words, the passage of that act marked a further change in the policy of the law towards the indigent insane. Maintenance thereafter furnished was to be furnished not as an unconditional charity, but upon the expectation of future reimbursement, if the circumstances of the beneficiary should permit. The provision that the committee or trustee

of such insane person shall reimburse the District for care and expenses up to the time of the appointment of such committee or trustee was, we think, intended to relate back to the passage of the act, and no further. Upon that date, as above pointed out, the status of the insane person changed, and, by implication of law, he thereafter became liable for the support furnished him."

A new policy is also declared by the Act, "whereby maintenance thereafter furnished was to be furnished, not as an unconditional charity, but upon the expectation of future reimbursement," should the insane person become possessed of sufficient estate. The concluding words of the section of the Act quoted, which appear to limit recovery "up to the time" of the appointment of the committee or trustee, as suggested in the *Baker Case*, *supra*, relates to the right of recovery prior to the appointment and back to the date of commitment, provided the commitment does not antedate the Act. After the appointment of the committee or trustee, the statutes, construed together, confer such general power in the court over the persons and estate of the insane, to subject their property to their support (D. C. Code, § 116d), and to supervise the conduct of the committee or trustee upon whom the duty of providing for the support of the ward primarily rests, that its jurisdiction to decree the district reimbursement out of the estate of an insane person cannot be successfully challenged. *Depue v. District of Columbia*, (1916) 45 App. Cas. (D. C.) 54, Ann. Cas. 1917E 414.

IMMIGRATION

Vol. III, p. 640, sec. 2.

V. Persons likely to become a public charge.

VIII. Persons solicited to migrate.

V. PERSONS LIKELY TO BECOME A PUBLIC CHARGE (p. 643)

Evidence.—For evidence held insufficient to support the charge and finding that an alien was a person likely to become a public charge at the time of his entry into the United States, see *Ex parte Callow*, (D. C. Colo. 1916) 240 Fed. 212.

VIII. PERSONS SOLICITED TO MIGRATE (p. 646)

Persons excluded.—It was not the intention of Congress to restrict the prohibition to manual laborers and not to apply it to those engaged in other employment. By this section all persons are excluded who do not come within the specified exemptions. The provisions are not limited to "labor" or "service" but are limited expressly by the exemptions. *Ex parte Toguchi*, (W. D. Wash. 1916) 238 Fed. 632.

Vol. III, p. 649, sec. 3.

Construction—Application to alien residing in Hawaiian Islands.—In *U. S. v. Kimi Yamamoto*, (C. C. A. 9th Cir. 1917) 240 Fed. 390, 153 C. C. A. 316, it appeared that the appellee came to the Hawaiian Islands in 1897 and had since been a resident thereof. She was ordered deported upon proof of the charge that she practiced prostitution after entry into the United States. The court below, upon writ of habeas corpus issued to determine the legality of the order of deportation, entered an order of discharge, holding that persons who admittedly were residents of the territory of Hawaii before annexation thereof by the United States did not enter the United States within the meaning of this section. To the same effect see *U. S. v. Sin Joy*, (C. C. A. 9th Cir. 1917) 240 Fed. 392, 153 C. C. A. 318.

Owner of premises used for purpose of prostitution.—An alien landlord who leases to a prostitute the house in which she practices prostitution and who receives from her rent thereof, is not within the classification of this section. *Katz v. Immigration Commissioner*, (C. C. A. 9th Cir. 1917) 245 Fed. 316, 157 C. C. A. 508, wherein error was assigned on account of the holding in the court below that the owner of a house in which prostitution

was practiced and carried on and who received rent thereon from an inmate thereof was within the statute as one "deriving benefit from the earnings of a prostitute" In reversal the court said: "It is quite unreasonable to suppose that the dry goods salesman or the grocer, who sells his goods to a fallen woman and takes the price from her, or a cabman, who carries her for hire and receives the hire from her, or, as in the present case, the landlord, who rents her abode to her and takes rental therefor, all or any of them were designed to be classified as persons who receive or derive benefit from the earnings of a prostitute, and such, we are impressed, is not the intentment of the statute.

"The power to regulate and suppress brothels and bawdyhouses, which includes the regulation of leasing houses or buildings for such purposes, is police in character, and in general is exercised by the states and local municipalities, rather than by the general government; and the statute in question manifests no intentment to encroach upon or interfere with such regulations. It deals, as we have seen, with certain alien classes, and provides for the deportation of aliens comprised thereby, and, considering the spirit and purpose of the statute, we think that there is no intentment to include an alien landlord, who leases to a prostitute the house in which she lives or practices prostitution and receives from her the rental thereof."

Fair trial.—Where, in proceedings to deport an alien woman on the ground that she was practicing prostitution, she admitted the charge in a signed and sworn statement and was then asked if she desired counsel, and the counsel then appearing in her behalf stated that he did not desire to offer any further evidence or to file a brief, an objection that she had no fair hearing before the immigration authorities was untenable. Under such circumstances counsel waived the right to offer testimony again, and acted upon the assumption that the sworn statement which had previously been made by his client before the immigration officer was the evidence to be considered in the case, and that upon it the authorities could make such order as might be appropriate in the premises.

For evidence held to be insufficient to support a finding and recommendation of deportation of an alien on the ground that he was deriving benefit from the earnings of a prostitute, see *Katz v. Immigration Commission*, (C. C. A. 9th Cir. 1917) 245 Fed. 316, 157 C. C. A. 508;

Backus v. Katz, (C. C. A. 9th Cir. 1917) 245 Fed. 320, 157 C. C. A. 512.

Vol. III, p. 654, sec. 4.

Soliciting importation.—Soliciting the importation of a contract laborer, although there is no actual entry into the United States, is an offense under the statute and the fact that the alien was prevented by the government from entering, would not make the offender guiltless. *U. S. v. Morrissey*, (C. C. A. 8th Cir. 1917) 245 Fed. 923, 158 C. C. A. 211, following *New York Cent., etc., R. Co. v. U. S.*, (C. C. A. 2d Cir. 1917) 239 Fed. 130, 152 C. C. A. 172.

Salesman.—In *Ex parte Toguchi*, (W. D. Wash. 1916) 238 Fed. 632, which was an application for writ of habeas corpus, it appeared that the petitioner came from Japan to the United States to take a position as salesman in the store of his uncle who conducted a Japanese silk and drygoods and bamboo business in Detroit. The uncle sent to petitioner \$100 to apply on his expenses and told him to apply for more money on landing if needed. No salary was agreed upon to be paid to the petitioner. The Board of Immigration found that he came to the United States in violation of the alien contract labor provision of the Immigration Act, rejected him on that ground and ordered his deportation to Japan. The Secretary of Labor affirmed the finding of the board. It was contended that the intent of Congress was to restrict the prohibition to manual laborers and not to apply it to those engaged in other employment. But, in denying the writ, the court held that all persons are excluded who do not come within the exemptions specified in the provisions of sections 2, that the provisions are not limited to "labor" or "service" but are limited expressly by the exemptions. The fact that no salary was agreed upon was immaterial as a reasonable compensation would be implied.

The gist of the offense consists in the prepayment of transportation and the offense is committed when that is done, whether the contract laborers succeed in getting into the United States or not. *U. S. v. New York Cent., etc., R. Co.*, (N. D. N. Y. 1916) 232 Fed. 179, affirmed (C. C. A. 2d Cir. 1917) 239 Fed. 130, 152 C. C. A. 172. See also *U. S. v. Morrissey*, (C. C. A. 8th Cir. 1917) 245 Fed. 923, 158 C. C. A. 211.

But in *U. S. v. River Spinning Co.*, (D. C. R. J. 1917) 243 Fed. 759, the court took the view that there must be an actual and completed migration or importation. The court said: "Had it been the intent to impose a penalty for assistance, encouragement, or solicitation of a person who did not in fact migrate, or for attempts to induce a person to do what was not in fact done, different

phraseology would seem have been necessary. To assist, encourage, or solicit a person, in order that he may form an intention to migrate, which intention is not carried out, is in substance a different thing from inducing, causing or assisting to cause an actual importation or migration."

Vol. III, p. 656, sec. 5.

Venue of action.—In an action to recover the statutory penalty provided by this section, the place of bringing suit is governed by section 43 of the Judicial Code, a re-enactment without change of R. S. sec. 732 (title JUDICIARY, vol. 5, p. 475). *Tomkins v. Paterson*, (W. D. Wash. 1916) 238 Fed. 879.

Vol. III, p. 659, sec. 6.

Failure of alien to enter country.—The solicitation, by advertisement, of an alien to enter the country, constitutes the offense although such alien was prevented from entering the country by the government. *U. S. v. Morrissey*, (C. C. A. 8th Cir. 1917) 245 Fed. 923, 158 C. C. A. 211, following *New York Cent., etc., R. Co. v. U. S.*, (C. C. A. 2d Cir. 1917) 239 Fed. 130, 152 C. C. A. 172, which affirmed (N. D. N. Y. 1916) 232 Fed. 179.

But in *U. S. v. River Spinning Co.*, (D. C. R. I. 1917) 243 Fed. 759, the court took a contrary view, holding that the penalty is incurred only when the migration or importation is a completed fact. The court said: "Had it been the intent to impose a penalty for assistance, encouragement, or solicitation of a person who did not in fact migrate, or for attempts to induce a person to do what was not in fact done, different phraseology would seem to have been necessary. To assist, encourage, or solicit a person, in order that he may form an intention to migrate, which intention is not carried out, is in substance a different thing from inducing, causing, or assisting to cause an actual importation or migration."

Vol. III, p. 673, sec. 20.

- I. Entering in violation of law.
- II. Limitation of time for deportation.
- V. Warrant of deportation.
- VI. Place of deportation.
- VIII. Habeas corpus.
- IX. Deportation of Chinese.

I. ENTERING IN VIOLATION OF LAW (p. 673)

Surreptitious entry.—The entry into the United States surreptitiously and without inspection, is sufficient in itself, irrespective of other consideration, to justify an order of deportation. *Singh v. U. S.*, (C. C. A. 9th Cir. 1917) 243 Fed. 557, 156 C. C. A. 255; *Singh v. U. S.*, (C. C. A.

9th Cir. 1917) 243 Fed. 559, 156 C. C. A. 257.

II. LIMITATION OF TIME FOR DEPORTATION (p. 674)

Rule stated.—The jurisdiction of the Secretary of Labor depends upon the fact that the alien has entered the United States within the period of three years preceding his arrest by the immigration authorities. *Backus v. Owe Sam Goon*, (C. C. A. 9th Cir. 1916) 235 Fed. 847, 149 C. C. A. 159.

V. WARRANT OF DEPORTATION (p. 677)

Designation of place of deportation.—The warrant must designate the country to which the alien shall be taken on deportation. It is not enough that it direct deportation "to the country whence he came." An alien is not without right simply because he is subject to deportation. He cannot simply be sent away. He has a right under the Act to be returned to the country from which he came, and to be protected in that right, the warrant which authorizes the deportation should expressly name the country to which he is to be taken; and that right should not be left to the determination of the officer executing the warrant or to the transportation company which brought him in as their judgment or convenience might dictate. *Ex parte Callow*, (D. C. Colo. 1916) 240 Fed. 212.

Postponing deportation pending proceedings in state court.—In the case of *In re Andrews*, (D. C. Vt. 1916) 236 Fed. 300, it appeared that while the petitioner was in the custody of the United States Inspector of Immigration, confined in jail at St. Albans, Vt., awaiting her deportation to Canada, the Department of Labor, at the request of the state postponed her deportation and surrendered her to the state authorities for the purpose of insuring her appearance as a witness for the state before a County Court. The petitioner claimed that the Department of Labor had no right to allow her to be taken out of the custody of the immigration inspector and that she had the right to be deported forthwith. It was held that such surrender to the state authorities was proper on the well settled rule that as a matter of comity between the federal and state governments either may surrender its custody of a prisoner to the other without the prisoner's consent. In such a case, the question of the jurisdiction and custody of the prisoner is one of comity between the governments, and not a personal right of the prisoner.

VI. PLACE OF DEPORTATION (p. 678)

"Country whence he came."—Where an alien, a native East Indian, entered the United States surreptitiously from Can-

ada and it appeared that he had never acquired a domicile in Canada, it was held that he was properly ordered deported to India, the country whence he came. *Singh v. U. S.*, (C. C. A. 9th Cir. 1917) 243 Fed. 557, 156 C. C. A. 255; *Singh v. U. S.*, (C. C. A. 9th Cir. 1917) 243 Fed. 559, 156 C. C. A. 257.

VIII. HABEAS CORPUS (p. 679)

Review.—Where an immigrant is ordered deported on the ground that there is danger of such immigrant becoming a public charge, the court cannot disturb this finding if there is evidence however slight to support the finding, but when there is nothing to support such a charge, the court may rightfully hold that the detention and deportation of the immigrant is an abuse of power. *U. S. v. Howe*, (S. D. N. Y. 1916) 235 Fed. 990, wherein a writ of habeas corpus was sustained and the immigrant released on the ground that there was no evidence to hold the applicant for deportation.

IX. DEPORTATION OF CHINESE (p. 679)

Violation of Chinese Exclusion Act—

After the expiration of three years.—The deportation of a Chinese person under the Immigration Act, for a violation of the Chinese Exclusion Act, is unauthorized. *Moy Wing Sun v. Prentis*, (C. C. A. 7th Cir. 1916) 234 Fed. 24, 148 C. C. A. 40; *Wong Yuen v. Prentis*, (C. C. A. 7th Cir. 1916) 234 Fed. 28, 148 C. C. A. 44; *Backus v. Owe Sam Goon*, (C. C. A. 9th Cir. 1916) 235 Fed. 847, 149 C. C. A. 159.

If more than three years have elapsed since the entry the government may proceed under the special Chinese Exclusion Act alone. *Wong Chung v. U. S.*, (C. C. A. 9th Cir. 1917) 244 Fed. 410, 157 C. C. A. 36.

If more than three years have elapsed 5th Cir. 1917) 240 Fed. 368, 153 C. C. A. 294, following *Ex parte Woo Jan*, (E. D. Ky. 1916) 228 Fed. 927, and *U. S. v. Prentis*, (N. D. Ill. 1916) 230 Fed. 935, cited in the original note, it was held, that deportation proceedings under the Immigration Act are not applicable to persons whose only offense is a violation of the Chinese Exclusion Act.

Violation of Immigration Act.—It has been held that for a violation of this section, in securing admission into the United States, a Chinese alien is subject to deportation under the provisions of this Act, at any time within three years after the date of his entry. *Mok Nuey Tau v. White*, (C. C. A. 9th Cir. 1917) 244 Fed. 742, 157 C. C. A. 190; *Quan You v. White*, (C. C. A. 9th Cir. 1917) 244 Fed. 746, 157 C. C. A. 194.

Vol. III, p. 681, sec. 21.

Review by court.—On habeas corpus to determine the legality of detention in deportation proceedings, the courts in-

quiry is limited as to whether the applicant was accorded an impartial hearing, and cannot inquire into the sufficiency of probative facts or consider reasons for the conclusions reached by the immigration officers. The question is not, Would the court have come to the same conclusion? but, Was the petitioner accorded a fair hearing? *Ex parte Chin Doe Tung*, (W. D. Wash. 1916) 236 Fed. 1017.

Vol. III, p. 684, sec. 24.

Limitation on authority to administer oath.—Under this section immigration officers have power to administer oaths and take and consider evidence touching the right of an alien to enter the United States; but they have no power to administer oaths in an inquiry relating to the deportation of an alien. *Backus v. Owe Sam Goon*, (C. C. A. 9th Cir. 1916) 235 Fed. 847, 149 C. C. A. 159.

Vol. III, p. 685, sec. 25.

III. FINALITY OF DECISIONS OF IMMIGRATION OFFICERS (p. 687)

Decision of collector of customs.—A favorable decision by a collector of customs permitting a Chinese person to enter the United States is not a final or conclusive adjudication but is subject to re-examination by the courts. *Ex parte Chin Own*, (W. D. Wash. 1917) 239 Fed. 391.

Conclusiveness of favorable decision.—Due process of law.—Due process of law does not necessarily require a judicial trial and Congress may intrust the decision of an immigrant's right to enter to an executive officer, even though denial of admission may deprive him of his liberty. *Ex parte Chin Own*, (W. D. Wash. 1917) 239 Fed. 391, following *U. S. v. Ju Toy*, (1905) 198 U. S. 253, 25 S. Ct. 644, 49 U. S. (L. ed.) 1040, cited in the original note.

Vol. III, p. 697, sec. 36.

Purpose of section.—The plain purpose of this section, when considered with

other pertinent parts of the Act, is to require all aliens who enter the United States to submit themselves to inspection when they so enter. If they enter at seaports they are inspected at the place of landing, and if not at seaports, they must present themselves for inspection at the places designated by the secretary for that purpose. The Act justly places the burden on the alien to present himself at the proper place. It does not contemplate nor permit that he shall walk by, and if unobserved, then be entitled to claim that he is in by right; but to the contrary, the section expressly declares that he is thus unlawfully in the country and shall be deported. *Ex parte Callow*, (D. C. Colo. 1916) 240 Fed. 212.

Expatriated citizen.—Where a citizen of the United States, who with his family goes to Canada, and there later enlists in the army of that country for overseas service, making the necessary declarations, and takes an oath of allegiance that he will be faithful and bear true allegiance to His Majesty King George the Fifth, his heirs and successors, and that he will as in duty bound honestly and faithfully defend His Majesty, his heirs and successors, in person, crown, and dignity, against all enemies, and will observe and obey all orders of His Majesty, his heirs and successors, and of all the generals and officers set over him, so help him God, and actually enters the service, he thereby effectually expatriates himself. Such person, by such acts, if voluntary, not only abandons and renounces his citizenship in the United States, but becomes an alien, and by such removal, enlistment, and oath of allegiance to a foreign power initiates naturalization in such foreign country and comes under its protection. Therefore, when he thereafter deserts such service and surreptitiously returns to the United States, not coming through any port of entry, he comes in violation of law, and may be deported under the provisions of this section. *Ex parte Griffin*, (N. D. N. Y. 1916) 237 Fed. 445.

IMPORTS AND EXPORTS

Vol. III, p. 712, sec. 27.

Purpose of provision.—The obvious purpose of this provision is to protect the public and to prevent any one from importing goods identified by their registered trademark which are not genuine. But it does not protect the owner of a registered trademark against the importation by third parties of the genuine

article under that trademark. *Fred Gretsck Mfg. Co. v. Schoenig*, (C. C. A. 2d Cir. 1916) 238 Fed. 780, 161 C. C. A. 630.

Vol. III, p. 723, sec. 1.

Constitutionality.—This Act is not unconstitutional in so far as it attempts to make penal the keeping and transporta-

tion of opium within the limits of a state and as being in conflict with the police power of the state. *Shepard v. U. S.*, (C. C. A. 9th Cir. 1916) 236 Fed. 73, 149 C. C. A. 283, *following Brolan v. U. S.*, (1915) 236 U. S. 216, 35 S. Ct. 285, 59 U. S. (L. ed.) 544, wherein this objection to the statute was held to be so utterly devoid of merit as to be frivolous. To the same effect, see *U. S. v. Ah Hung*, (E. D. N. Y. 1917) 243 Fed. 762.

Vol. III, p. 725, sec. 2.

Validity of statute—Possession proof of guilt.—There can be no doubt of the general power and authority of Congress to create a rule changing the burden of proceeding in a criminal case, by providing that upon the production of certain facts it shall rest upon the defendant, and also to establish a rule of evidence making proof of one fact prima facie evidence of another related thereto. We must, of course, keep it in mind that the statute under examination has not attempted to make a rule that any inference or presumption of fact shall be conclusive at law. The statute has laid down a rule, not of substantive law at all, but merely of evidence. It does not in any way conclusively shut out all evidence from defendant; it has declared that, a prima facie case being made, the duty of producing evidence to avoid the effect of such prima facie case is upon the defendant. The great weight of authority confirms our belief that such a law is in no way in excess of power. *Ng Choy Fong v. U. S.*, (C. C. A. 9th Cir. 1917) 245 Fed. 305, 157 C. C. A. 497.

Effect of statute.—The effect of this law is to put upon every person in the United States the burden of refusing to deal with what is upon its face contraband, unless he can show its innocent character. If, under those circumstances, he takes into his possession an article which is thus labeled contraband, he commits a violation of the statute which renders him liable to punishment unless thereafter he can save himself by obtaining the proof which he should have required before purchasing the article. *U. S. v. Ah Hung*, (E. D. N. Y. 1917) 243 Fed. 762.

Defense—Permission of government officials to removal of opium.—In *Jung Quey v. U. S.*, (C. C. A. 9th Cir. 1915) 222 Fed. 766, 138 C. C. A. 314, it appeared in evidence that the quartermaster of a steamship took opium prepared for smoking purposes from his steamship while it was in a United States port, and that he did so with the permission of the government, through its duly authorized

officers, for the purpose of securing evidence against the defendants who received it. The court held that this evidence did not constitute a defense to a prosecution of the defendants for a conspiracy to receive opium imported contrary to law but could properly be considered in establishing their guilt.

Vol. III, p. 726, sec. 3.

Constitutionality.—The presumption here involved, though beyond any in revenue laws or elsewhere, appears to come within the limits of legislative power. Doubtless it goes far to prevent possession, use, and intrastate traffic in opium which are subject only to state police power; but this is only incidental to regulation of foreign commerce over which Congress has exclusive authority. This section provides for presumptions or prima facie proof of the offense, which, while sufficient to sustain a verdict of guilty, may or may not be sufficient to satisfy the jury of the guilt of the accused beyond a reasonable doubt. It is but what is commonly styled a rule of evidence and not a substantive law creating a new offense, and does not deprive the jury of its function of weighing evidence and determining facts. Like presumptions are familiar to common and statutory law in England and this country. So too, to civil law they dictate the burden of evidence as public policy may require. Conforming to ancient procedure, when not prohibited by constitutions, legislative bodies have power to create them, and in their application is "due process of law," provided there is rational connection between the facts therefrom inferred, that the inferences are not so unreasonable as to be mere arbitrary mandates and that the party affected is free to oppose them. *U. S. v. Yee Fing*, (D. C. Mont. 1915) 222 Fed. 154.

Effect of section.—By the provisions of this section the opium itself is presumed to have been imported illegally, and the burden of rebutting that presumption is on the defendant as well as the burden of explaining his possession so as to relieve himself of knowledge as to the importation. This leaves the defendant in the situation of being liable to an accusation that he was in the possession of material presumed to be contraband and presumed to have been brought into the country unlawfully, unless he can show either a certificate or clear chain of title and history of the article, carrying it back of a possible contraband source. *U. S. v. Ah Hung*, (E. D. N. Y. 1917) 243 Fed. 762.

INDIANS

Vol. III, p. 800, sec. 38.

Evidence.—Evidence that an Indian man and woman held themselves out as man and wife and were reputed to be married, and that it was customary to disregard solemnization before a judge or clergyman, warrants a finding of compliance with all the requisites to validate the marriage under this section. *Carney v. Chapman*, (1917) 247 U. S. 102, 38 S. Ct. 449, 62 U. S. (L. ed.) 595.

Vol. III, p. 819, sec. 15.

Restrictions on alienation.—An Indian who had made a homestead entry under this Act and had substantially performed the conditions entitling him to a patent, except the making of final proof, at the date of the passage of the Act of July 4, 1884 (vol. 3, p. 820), is not affected by the provisions of the latter Act that such Indians as might then be located on the public lands, or should thereafter so locate, might avail themselves of the homestead laws, but that patents issued thereunder should contain a twenty-five years' limitation upon alienation. *U. S. v. Hemmer*, (1916) 241 U. S. 379, 38 S. Ct. 659, 60 U. S. (L. ed.) 1055, *affirming* (C. C. A. 8th Cir. 1912) 204 Fed. 898, 123 C. C. A. 194.

Vol. III, p. 820, sec. 1.

This Act did not repeal, amend or modify any of the provisions of the Act of March 3, 1875, ch. 31, § 15 (vol. 3, p. 819), and did not extend from five years to twenty-five years the restriction of the lands acquired by an Indian homestead under the earlier Act. *U. S. v. Hemmer*, (1916) 241 U. S. 379, 38 S. Ct. 659, 60 U. S. (L. ed.) 1055, *affirming* (C. C. A. 8th Cir. 1912) 204 Fed. 898, 123 C. C. A. 194.

Cancellation of patents.—The land office has no authority to cancel a trust patent to a homestead obtained under this Act and issue a new patent without restriction on alienation under section 6 of the Act of Feb. 8, 1887 (vol. 3, p. 830). *Seaples v. Card*, (E. D. Wash. 1915) 246 Fed. 501.

Vol. III, p. 830, sec. 6.

Restrictions on alienation.—Where a trust patent to a homestead was obtained under the Act of July 4, 1884 (vol. 3, p. 820), the land office has no authority to cancel such patent and issue a new one without restrictions on alienation under this section. *Seaples v. Card*, (E. D. Wash. 1915) 246 Fed. 501.

Emancipation from federal control.—No intention can be gathered from this section to dissolve the tribal relations and terminate the national guardianship upon the making of the allotments and the issuing of the trust patents without waiting for the expiration of the trust period, in view of the provisions of the preceding section 5. *U. S. v. Nice*, (1916) 241 U. S. 591, 36 S. Ct. 696, 60 U. S. (L. ed.) 1192.

Vol. III, p. 837, sec. 3.

Oil and gas lease of Indian lands.—Taxation.—A state may not, when assessing for purposes of taxation the corporate assignee of an oil and gas lease of Osage lands, made under the authority of this Act, include in such assessment the lease and rights thereunder, either as separate objects of taxation, or as represented or valued by the stock of the corporation. *Indian Territory Illuminating Oil Co. v. Oklahoma*, (1916) 240 U. S. 522, 36 S. Ct. 453, 60 U. S. (L. ed.) 779.

Vol. III, p. 846, sec. 7.

Validity.—Congress had power to remove the restrictions originally imposed upon alienation heirs. *Egan v. McDonald*, (1918) 246 U. S. 227, 38 S. Ct. 223, 62 U. S. (L. ed.) 680, *affirming* (1915) 36 S. D. 92, 153 N. W. 915.

Vol. III, p. 850, sec. 2.

Avoiding conveyances of Indian allotments.—The United States was without capacity to bring suit on behalf of Indian grantors to set aside, because of the fraud of the grantees and the incapacity of such grantors, certain conveyances by adult mixed blood Chippewa Indians of their patented allotments in the White Earth Indian Reservation, where such conveyances were made after the adoption of this Act. *U. S. v. Waller*, (1917) 243 U. S. 452, 37 S. Ct. 430, 61 U. S. (L. ed.) 843.

Vol. III, p. 850, sec. 1.

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Vol. III, p. 853, sec. 1.

Reopening decision of Secretary of Interior.—An order of the Secretary of the Interior, recognizing the adopted children of a deceased Indian allottee as his heirs, though made final and conclusive by this Act, does not exhaust his power so as to permit the courts by mandamus to interfere with his action in reopening the matter for further consideration, where the property to which the order relates is still in the administrative control of the department because of the trust imposed by the law of the United States until the expiration of the statutory period. *Lane v. U. S.*, (1916) 241 U. S. 201, 38 S. Ct. 599, 60 U. S. (L. ed.) 956.

Vol. III, p. 863, sec. 3.

Effect of enrolment.—Enrolment confers rights which cannot be taken away without notice and opportunity to be heard. But enrolment may be canceled by the Secretary of the Interior for fraud or mistake. *Duncan Townsite Co. v. Lane*, (1917) 245 U. S. 308, 38 S. Ct. 99, 62 U. S. (L. ed.) 309.

Vol. III, p. 872, sec. 19.

Osage Indian allotments—Restrictions on alienation by nonmembers of tribe.—The restrictions on alienation of Osage Indian allotments, imposed by Act of June 28, 1906, ch. 3572 (see Vol. 3, p. 862), do not apply to lands or any interest therein which have come into the possession of a white man not a member of the tribe, under allotments made in the right of certain deceased Indians to their respective heirs. *Levin-dale Lead, etc., Min. Co. v. Coleman*, (1916) 241 U. S. 432, 38 S. Ct. 644, 60 U. S. (L. ed.) 1080.

Taxation.—The exemption from taxation of lands allotted to an Indian under former acts is not, in view of this section, available to his grantees. *Sweet v. Schock*, (1917) 245 U. S. 192, 38 S. Ct. 101, 62 U. S. (L. ed.) 237.

Vol. III, p. 874, sec. 22.

Validity of statute.—A statute requiring approval by the Secretary of the Interior of conveyances made by a tribal Indian is not unconstitutional, even as applied to land upon the conveyance of which no such obstruction existed at the time of its enactment, and notwithstanding the admission of its owner to citizenship. *Brader v. James*, (1917) 246 U. S. 88, 38 S. Ct. 285, 62 U. S. (L. ed.) 591, *affirming* (1916) 49 Okla. 734, 154 Pac. 560.

Allotment to representative of deceased Indian—Restrictions.—The restrictions made by the provisions of this section

apply as well in a case where selection has been made as provided by section 20 of the Cherokee Agreement (32 Stat. L. 716, ch. 1375) by the duly appointed executor or administrator of an Indian who died before receiving his allotment, as to a case where the land was selected by the ancestor in his lifetime. *Talley v. Burgess*, (1918) 246 U. S. 104, 38 S. Ct. 287, 62 U. S. (L. ed.) 600, *affirming* (1915) 46 Okla. 550, 149 Pac. 120.

Conveyance by minor heir of allottee—Approval by court.—Read as a whole and construed in the light of the purpose to be accomplished this section requires approval by the United States court for the Indian Territory of conveyances made by the guardian of minor heirs of a deceased Indian allottee. *Talley v. Burgess*, (1918) 246 U. S. 104, 38 S. Ct. 287, 62 U. S. (L. ed.) 340, *affirming* (1915) 46 Okla. 550, 149 Pac. 120.

Conclusiveness of citizenship roll.—The approved Seminole citizenship roll must be deemed conclusive as to the amount of Indian blood of an enrolled member of that tribe when testing his right under this section to convey his lands. *U. S. v. Ferguson*, (1917) 38 S. Ct. 434, 62 U. S. (L. ed.) 592, *affirming* (C. C. A. 8th Cir. 1915) 225 Fed. 974, 141 C. C. A. 96.

Approval by Secretary of Interior.—The approval of the Secretary of the Interior is, by this section, made a condition of a valid conveyance by the heirs of a deceased allottee of either of the Five Civilized Tribes and must be obtained in the case of land as to which the original restriction upon alienation by the allottee or his heirs had expired before its enactment. *Brader v. James* (1918) 246 U. S. 88, 38 S. Ct. 285, 62 U. S. (L. ed.) 335, *affirming* (1916) 49 Okla. 734, 154 Pac. 560.

Vol. III, p. 883, sec. 2.

Discretionary power of Secretary of Interior.—The discretionary power of the Secretary of the Interior, under this section, with respect to the approval of oil and gas leases on Indian lands, was not exceeded when he gave such approval to that one of two leases for the same premises which was earlier in time, but later in filing for record with the Indian agency. *Anicker v. Gunsburg*, (1918) 246 U. S. 110, 38 S. Ct. 228, 62 U. S. (L. ed.) 603, *affirming* (C. C. A. 8th Cir. 1915) 226 Fed. 176, 141 C. C. A. 174.

Vol. III, p. 887, sec. 4.

Taxation.—The exemption from taxation of lands allotted to an Indian under former acts is not, in view of this section, available to his grantees. *Sweet v. Schock*, (1917) 245 U. S. 192, 38 S. Ct. 101, 62 U. S. (L. ed.) 132.

Vol. III, p. 915, sec. 2140.

Forfeiture.—By the construction of the courts forfeiture, under this section, has been confined to the interest only of the person guilty of the introduction, so that only where the vehicles were actually owned by the person using them in violating the law, could they be condemned and forfeited. See *U. S. v. One Buick Roadster Automobile*, (E. D. Okla. 1917) 244 Fed. 961.

Amendment.—The Act of March 2, 1917, ch. 146, sec. 1, *ante*, this volume, p. 260, effected an amendment of this section by an extension of its provisions, so that as to seizure, libel and forfeiture of vehicles it was operative, not only in what is strictly Indian country but also in any other places where the introduc-

tion of such intoxicants is prohibited by treaty or federal statute. *U. S. v. One Buick Roadster Automobile*, (E. D. Okla. 1917) 244 Fed. 961.

Vol. III, p. 919, sec. 1.

"Indian country."—A station platform on a railway right of way through the heart of the Crow Indian Reservation, is Indian country within the meaning of this Act. *U. S. v. Soldana*, (1918) 246 U. S. 530, 38 S. Ct. 357, 62 U. S. (L. ed.) 870.

Introducing liquor into Indian country.—The mere transportation of liquor across an Indian allotment is not by itself a violation of this Act. *Butterfield v. U. S.*, (C. C. A. 8th Cir. 1917) 241 Fed. 556, 154 C. C. A. 332.

INTERNAL REVENUE

Vol. III, p. 1002, sec. 3173.

Compelling production of books.—Under this section the Commissioner of Internal Revenue may compel the production of books by one who has become subject to the stamp tax on agreement of sale imposed by the War Revenue Act of Oct. 22, 1914, ch. 331, sec. 22, vol. IV, p. 297; and an order to produce books is not violative of any constitutional right. *Calkins v. Smietanka*, (N. D. Ill. 1917) 240 Fed. 138.

This section was amended in the War Revenue Act of Sept. 8, 1916, ch. 463, sec. 16, *ante*, this volume, title INTERNAL REVENUE, p. 280.

Vol. III, p. 1010, sec. 3182.

Power to assess stamp taxes is given by this section, and is not taken away by R. S. sec. 3176, as amended in Act of Sept. 8, 1916, ch. 463, sec. 16, *ante*, this volume, title INTERNAL REVENUE, p. 281; "section 3182 is most general, comprehensive, and inclusive, and was unquestionably intended to give, and did give, the Commissioner of Internal Revenue authority to make assessments 'of any tax imposed by this title' being 'Title XXXV—Internal Revenue.' . . . In other words Congress gave the Commissioner of Internal Revenue authority to make assessment of all taxes that were imposed by congressional enactment and which came under the heading of 'Internal Revenue.'" *Calkins v. Smietanka*, (N. D. Ill. 1917) 240 Fed. 138.

This section authorizes assessment of penalties arising under the Act of Oct. 22, 1914, ch. 331, vol. IV, p. 284 *et seq.*, when the section is construed with other

provisions of the statutes. *Kohlhamer v. Smietanka*, (N. D. Ill. 1917) 239 Fed. 408.

Vol. III, p. 1032, sec. 3224.

The only redress for an aggrieved taxpayer is the method provided in R. S. sec. 3226, vol. III, p. 1034; *Calkins v. Smietanka*, (N. D. Ill. 1917) 240 Fed. 138.

"The word 'assessment,' as used in this section, cannot fairly be limited to the mental act of the officer who determines the amount. It must include the preliminary investigation as well as the final determination, for one is as important as the other." *Calkins v. Smietanka*, (N. D. Ill. 1917) 240 Fed. 138.

The inhibition of this statute applies to the collection by the Internal Revenue Collector of penalties assessed under the Act of Oct. 22, 1914, ch. 331, sec. 23, vol. IV, p. 305. *Kohlhamer v. Smietanka*, (N. D. Ill. 1917) 239 Fed. 408.

An application by a receiver for instructions whether to make a return under the federal Income Tax Act of 1913 was not affected by this section. It is not a suit to restrain the assessment or collection of a tax. *Scott v. Western Pac. R. Co.*, (C. C. A. 9th Cir. 1917) 246 Fed. 545, 158 C. C. A. 515.

Vol. III, p. 1067, sec. 3, par. First.

Constitutionality of tax.—The tax imposed by this section is upon a franchise to conduct the business of banking and clearly lawful. *Anderson v. Farmers' Loan, etc., Co.*, (C. C. A. 2d Cir. 1917) 241 Fed. 322, 154 C. C. A. 202.

Capital, etc., "employed" in banking.—In *Anderson v. Farmers' Loan, etc., Co.*, (C. C. A. 2d Cir. 1917) 241 Fed. 322, 154 C. C. A. 202, where a trust company did a large trust business and also a large banking business, it was held that certain invested assets were not capital, surplus, and undivided profits not employed in banking, but were employed in all the business of the bank of every kind, and that it was a question of fact, to be determined at a trial, just how far the so-called permanent investments were employed in banking, and that the fact was not to be determined by methods of bookkeeping, but by real transactions.

Vol. IV, p. 41, sec. 3280.

An indictment for unauthorized distillation of alcoholic spirits need not specify the particular kind of spirits which the defendant is accused of producing. Therefore, a specification thereof in the indictment may be regarded as surplusage. *Bullard v. U. S.*, (C. C. A. 4th Cir. 1917) 245 Fed. 837, 158 C. C. A. 177.

Vol. IV, p. 173, sec. 1.

An alien Chinese person, so proved to be on the trial, could not lawfully be convicted on an indictment not charging him with manufacturing opium while an alien, but charging a failure to give the bond required of manufacturers of opium for smoking purposes, and, while so failing, engaging in the business of manufacturing opium for smoking purposes. *Lee Mow Lin v. U. S.*, (C. C. A. 8th Cir. 1917) 240 Fed. 408, 153 C. C. A. 334.

Vol. IV, p. 177, sec. 1.

Revenue measure.—"It cannot now be questioned in any lower court that the Harrison Act is a revenue measure or tax law and is to be construed as such. *U. S. v. Jin Fuey Moy*, 241 U. S. 394, 39 S. Ct. 658, 60 U. S. (L. ed.) 1061, a decision which deprives of authority the judgment of this court in *Wilson v. U. S.*, 229 U. S. 344, 143 C. C. A. 464." *Lowe v. Farbwerke-Hoechst Co.*, (C. C. A. 2d Cir. 1917) 240 Fed. 671, 153 C. C. A. 469.

"The word 'derivative' is to be taken in its commonly received or popular sense, as distinguished from special or scientific usage. *Farbenfabriken v. U. S.*, 102 Fed. 603, 42 C. C. A. 525, and cases cited. . . . Even if it were possible chemically to extract from coca leaves the component parts of novocaine, the latter substance could not be called a derivative of cocoa leaves; it is a derivative of coal tar." *Lowe v. Farbwerke-Hoechst Co.*, (C. C. A. 2d Cir. 1917) 240 Fed. 671, 153 C. C. A. 469.

An indictment for unlawful dealing, etc., in cocaine, morphine sulphate, and

morphine was demurrable for failure to allege that either of said drugs was opium or coca leaves or any compound, manufacture, salt, derivative, or preparation of opium or coca leaves, since the court could not take judicial cognizance of the fact. *U. S. v. Hammers*, (S. D. Fla. 1917) 241 Fed. 542.

An indictment of a physician, charging him with giving a prescription for and so dispensing pounds of opium, charged no offense; because the word "dispense" as used in the statute "relates to actual delivery of the drug by the physician to the patient, from the former's office supply, generally, though not excluding other actual delivery." *U. S. v. Reynolds*, (D. C. Mont. 1916) 244 Fed. 991, sustaining a demurrer.

Vol. IV, p. 178, sec. 2.

Clause (a) is unconstitutional as in violation of the Tenth Amendment to the Federal Constitution so far as it makes criminal a sale, etc., by a registered physician of a prohibited drug, without a "written order," etc., and not "in the course of his professional practice," since said omissions are merely violations of local police regulations, which Congress had no power to establish, and are not means to effect the objects of the Act in respect of its revenue. *U. S. v. Doremus*, (W. D. Tex. 1918) 246 Fed. 958.

A physician or other person duly registered may be guilty of violating the Act. *Thurston v. U. S.*, (C. C. A. 5th Cir. 1917) 241 Fed. 335, 154 C. C. A. 215.

Conspiracy to violate the statute, see notes to section 37 in title PENAL LAWS, *post*, this volume.

Indictment—Negating exceptions in section 2a.—An indictment charging duly registered physicians, who had paid the tax assessed by the statute, with dispensing and distributing, without keeping a record, etc., was demurrable for failure to negative that the physician personally attended upon the person to whom the drug was dispensed or distributed. *U. S. v. Hammers*, (S. D. Fla. 1917) 241 Fed. 542.

Failure to preserve duplicate of order.—A demurrer on the ground that the offense was not alleged of a day certain was overruled to an indictment presented Oct. 26, 1916, which alleged that the defendant on May 13, 1916, gave an order for opium, which "was thereafter accepted," and "after the acceptance" he failed to preserve a duplicate thereof "in such a way as to be readily accessible," contrary to law, the court saying: "The offense would be committed when ready accessibility first failed after the order's acceptance and is capable of continuity."

U. S. v. Gaag, (D. C. Mont. 1916) 237 Fed. 728.

Vol. IV, p. 183, sec. 6.

The words "or other preparations" mean other preparations ejusdem generis with liniments and ointments. *Lowe v. Farbwerke-Hoechst Co.*, (C. C. A. 2d Cir. 1917) 240 Fed. 671, 153 C. C. A. 469.

Vol. IV, p. 187, sec. 8.

Constitutionality.—In *U. S. v. Brown*, (W. D. Wash. 1915) 224 Fed. 135, this section was declared constitutional.

"Any person not registered" in this section cannot be taken to mean any person in the United States, but must be understood to refer to the class with which the statutes undertakes to deal—the persons who are by section 1 required to register. *U. S. v. Jin Fuey Moy*, (1916) 241 U. S. 394, 36 S. Ct. 658, 60 U. S. (L. ed.) 1061, *affirming* (W. D. Va. 1915) 225 Fed. 1003.

In *U. S. v. Wilson*, (W. D. Tenn. 1915) 225 Fed. 82, the sole question determined was to whom the clause "any person not registered under the provisions of this act and who has not paid the tax" in the eighth section referred. The court said: "Clearly it refers to, and at least includes those doing the things specifically named in the first section. Does it refer to and include others doing things not specifically named in the act, viz., those having in their possession or under their control the drugs named for their personal consumption? It seems to me that to so hold would be for the court to enlarge the list of those whom Congress required to register and pay the special tax. In that event it would be an amendment of the act. This is not the function of the court."

To the same effect is *U. S. v. Jin Fuey Moy*, (W. D. Pa. 1915) 225 Fed. 1003; *U. S. v. Woods*, (D. C. Mont. 1915) 224 Fed. 278.

In *Wilson v. U. S.*, (C. C. A. 2d Cir. 1916) 229 Fed. 344, 143 C. C. A. 464, the plaintiff in error was convicted of a violation of this section; there having been found in his possession a substantial quantity of opium. He admitted that he kept it solely for the purpose of smoking it. He did not produce opium, nor import, nor manufacture, nor compound, nor deal in it. Nor did he dispense it, nor sell, distribute or give it away. Upon writ of error to review the judgment, it was affirmed, notwithstanding that the defendant contended that he was not within the provisions of section 8, because the words "any person" as used therein are to be construed as referring only to persons of the classes referred to in section 1 as being obliged to register and to pay a tax.

Possession of drugs by certain persons is made unlawful by this section, with some exemptions; the section "does not merely provide a presumption or a rule of evidence to establish a violation of section 1." *U. S. v. O'Hara*, (D. C. R. I. 1916) 242 Fed. 749.

Indictment—Alleging possession.—An indictment which charges that the defendant "did unlawfully, wrongfully, and knowingly sell, dispense, and distribute . . . morphine sulphate tablets," and that he sold and dispensed the same as a dealer to consumer, etc., is equivalent to charging that he had the drugs in his possession. *U. S. v. Curtis*, (N. D. N. Y. 1916) 229 Fed. 288.

But it has been held that a mere allegation that the defendant had the prohibited drug in his possession, or an equivalent count, is not sufficient to charge a violation of the provisions of the Act. Thus an indictment which charged that the defendant did "knowingly and unlawfully have in his possession a large quantity of morphine . . . without having theretofore registered with the collector of internal revenue his name and place of business and paid to said collector the special tax as required by the Act," was held not sufficient to charge a violation of any of the provisions of the Act. *U. S. v. Carney*, (N. D. Ia. 1915) 228 Fed. 163. To the same effect, upon similar indictments, see *U. S. v. Friedman*, (W. D. Tenn. 1915) 224 Fed. 276; *U. S. v. Woods*, (D. C. Mont. 1915) 224 Fed. 278; *U. S. v. Jin Fuey Moy*, (W. D. Pa. 1915) 225 Fed. 1003, *affirmed* (1916) 241 U. S. 394, 36 S. Ct. 658, 60 U. S. (L. ed.) 1061.

But compare *U. S. v. Brown*, (W. D. Wash. 1915) 224 Fed. 135, wherein a contrary conclusion was reached. In that case the view was taken that opium is an "outlaw" in this country and that the Act is therefore intended to prohibit the importation of the drug for any purpose whatever.

Negating innocent possession.—An indictment charging that defendants were persons mentioned in section 1, and unlawfully, wilfully, knowingly, and feloniously had in their possession and under their control certain of such drugs, was sufficient without alleging that such possession was for the purpose of dealing, etc., conceding that a dealer may have an innocent possession of drugs which is not connected with his dealing, for example, as medicine for his personal ailments. *U. S. v. O'Hara*, (D. C. R. I. 1916) 242 Fed. 749.

Vol. IV, p. 187, sec. 9.

"The rule of strict construction applies to criminal statutes such as this." U. S.

v. Doremus, (W. D. Tex. 1918) 246 Fed. 958.

Vol. IV, p. 189, sec. 6.

Constitutionality.—"The Oleomargarine Law was enacted under the power of Congress (Constitution, art. 7, § 8, par. 3): 'To regulate commerce with foreign nations, and among the several states, and with the Indian tribes.'" *Brougham v. Blanton Mfg. Co.*, (C. C. A. 8th Cir. 1917) 243 Fed. 53, 156 C. C. A. 201.

Relative to Meat Inspection Law.—"As a matter of common and judicial knowledge, oleomargarine is a meat product, and therefore its manufacture comes within the language of and is governed by the Meat Inspection Law of June 30, 1906, ch. 3913, 34 Stat. 676, forbidding the use of a 'false or deceptive name,' repeated in and superseded by the provision in the Meat Inspection Act of Mar. 4, 1907, ch. 2907, vol. I, p. 400. *Brougham v. Blanton Mfg. Co.*, (C. C. A. 8th Cir. 1917) 243 Fed. 503, 156 C. C. A. 201.

Vol. IV, p. 191, sec. 8.

"Removed."—Where defendant constructed a "cave" under the back room in one of his places of business, there colored oleomargarine without paying the government tax, and then transferred it from the "cave" to the salesroom in the same building, the oleomargarine was "removed" in violation of the statute as fully as though he had shipped it to an adjoining city. *Marhoefer v. U. S.*, (C. C. A. 7th Cir. 1917) 241 Fed. 48, 154 C. C. A. 48.

Vol. IV, p. 196, sec. 17.

Who may commit offense.—In *Marhoefer v. U. S.*, (C. C. A. 7th Cir. 1917) 241 Fed. 48, 154 C. C. A. 48, affirming a conviction for violation of this section, the court said: "The contention that the defendant Walsh should have been dismissed, because he was merely an employee, and not a manufacturer, is answered against the appellant in *May v. U. S.*, *supra* [(C. C. A. 8th Cir. 1912) 199 Fed. 42, 117 C. C. A. 420] and ample reasons for so holding are given."

Indictment.—Where an indictment charged that defendants were engaged in carrying on the business of manufacturing oleomargarine, and did defraud and attempt to defraud the United States of the tax on a quantity of oleomargarine "produced and manufactured and removed from the place of manufacture for consumption and sale by them . . . that is to say, . . . did manufacture produce and furnish for the use and consumption of others a large quantity" of oleomargarine artificially colored to look like butter,

which, "at the time it was so manufactured, produced, removed, and furnished" was subject to a tax, which they did not pay, it was held that, construing all the language together, the so-called specific allegations following the words "that is to say," did not narrow or restrict the general charge, but amplified and in greater particularity described how the defendant violated the requirements of section 8, and was sufficient to support a conviction. *Marhoefer v. U. S.*, (C. C. A. 7th Cir. 1917) 241 Fed. 48, 154 C. C. A. 48.

In *Marhoefer v. U. S.*, (C. C. A. 7th Cir. 1917) 241 Fed. 48, 154 C. C. A. 48, the indictment there quoted in full was held to be sufficiently specific and definite in charging an "attempt to defraud" the United States out of a tax on artificially colored oleomargarine.

Criminal prosecution as bar to forfeiture.—Acquittal of a stockholder of a corporation under an indictment for violating this section is no bar to a proceeding against the corporation for forfeiture for the same alleged offense charged against it. *U. S. v. Manufacturing Apparatus, etc.*, (D. C. Colo. 1916) 240 Fed. 235.

Vol. IV, p. 200, sec. 4.

"Absorption of abnormal quantities."—"Any departure from methods appropriate to the circumstances of the particular churning, departure from methods calculated to result in a product of appropriate quality, with intent and effect to increase moisture over what it would have been, but for such departure, has caused 'absorption of abnormal quantities of water, milk, or cream,' within the statute, whether the increase be due to retention of moisture throughout, or by elimination and reincorporation." *Henningsen Produce Co. v. Whaley*, (D. C. Mont. 1917) 238 Fed. 650.

A regulation of the commissioner of internal revenue that "butter having 16 per cent or more of moisture contains an abnormal quantity and is classed as adulterated butter," the regulation not applying to a farmer, was unauthorized and void, since it was legislative in character and not simply a rule of procedure and administration. *Henningsen Produce Co. v. Whaley*, (D. C. Mont. 1917) 239 Fed. 650.

Vol. IV, p. 232, sec. 3.

Contingent beneficial interests.—In *Uterhart v. U. S.*, (1916) 240 U. S. 598, 36 S. Ct. 417, 59 U. S. (L. ed.) 819, *reversing* (1914) 49 Ct. Cl. 709, it was held that the interests which the residuary legatees took by a will, the terms of which were there considered, as construed by a state court of competent jurisdiction, were contingent and not vested prior to July 1, 1902, within the meaning of this section.

Controlled by the decision in *Vanderbilt v. Eidman*, (1905) 196 U. S. 480, 25 S. Ct. 331, 49 U. S. (L. ed.) 563, it was held in *Rosenfeld v. Scott*, (C. C. A. 9th Cir. 1917) 245 Fed. 646, 158 C. C. A. 74, *reversing* (N. D. Cal. 1916) 232 Fed. 509, that certain life estates were contingent beneficial interests, and were not vested in possession or enjoyment prior to July 1, 1902.

Where a bequest of stock was made to an infant, the income to be collected by his guardian until he became of age, and applied to his necessary support and maintenance until he became of age, and then the corpus to be transferred to him, his interest in the bequest was absolute and subject to no contingency. *Deford v. U. S.*, (1917) 52 Ct. Cl. 220.

In *Carleton v. U. S.*, (1916) 51 Ct. Cl. 60, a will bequeathed \$10,000 to "said Minnie A. Townsend, her heirs and assigns forever, the income from which shall be paid by said Minnie A. Townsend, annually or semiannually to my cousin, Mrs. Augusta H. Worthen, as long as said Augusta H. Worthen shall live." The court said: "It is true that Minnie A. Townsend did not enjoy it at once, but immediately upon passing from the possession of the executors of the will the whole corpus of the legacy was in the possession and enjoyment of the beneficiaries named in the will; and that was all the requirement of the war-revenue act to make it subject to taxation."

Where a bequest of stock was made to an infant, this income to be collected by his guardian until he became of age, and applied to his necessary support and maintenance until he became of age and then the corpus to be transferred to him, his interest in the bequest was absolute and subject to no contingency. *Deford v. U. S.*, (1917) 52 Ct. Cl. 220.

A tax paid without any protest or declaration of any intention to contest its validity is a voluntary payment and not recoverable. *Rand v. U. S.*, (1917) 52 Ct. Cl. 72.

Compliance with R. S. sec. 3226, vol. III, p. 1034, is essential before suit can be maintained for recovery under this statute of taxes paid. And said R. S. sec. 3226 is unaffected by the Act of July 27, 1912, ch. 256, vol. IV, p. 236. *Rand v. U. S.*, (1917) 52 Ct. Cl. 72, 285.

Vol. IV, p. 236, sec. 2.

A tax paid without any protest or declaration of any intention to contest its validity is a voluntary payment and not recoverable. *Rand v. U. S.*, (1917) 52 Ct. Cl. 72.

Vol. IV, p. 236, A. subd. 1.

Income of one who died July 22, 1913, which accrued from March 1st was subject to tax in view of subdivision D of

this Act, which makes it retroactive. *Brady v. Anderson*, (C. C. A. 2d Cir. 1917) 240 Fed. 665, 153 C. C. A. 463.

Alimony paid to a divorced wife under a decree of court is not subject to an income tax under this subdivision. *Gould v. Gould*, (1917) 245 U. S. 151, 38 S. Ct. 53, 62 U. S. (L. ed.) 211.

A stock dividend which represents surplus profits transferred to the corporation's capital account is capital and not income within the meaning of the Income Tax Law. *Towner v. Eisner*, (1918) 245 U. S. 418, 38 S. Ct. 158, 62 U. S. (L. ed.) 372.

The distributive share of a stockholder paid over to him after the effective date of the Act, upon the surrender of his entire interest in the corporation, as a single and final dividend in liquidation of the company's entire assets and business, is not income arising or accruing during the year, where such payment, although equaling twice the par value of his stock, represented only its intrinsic value at and before the effective date of the Act, the increase in value being one to a gradual rise in the market value of the company's lands, culminating before the Act took effect. *Lynch v. Turrish*, (1918) 247 U. S. 221, 38 S. Ct. 537, 62 U. S. (L. ed.) 1087, *affirming* (C. C. A. 8th Cir. 1916) 236 Fed. 653, 149 C. C. A. 649) *distinguished* in *Lewellyn v. Gulf Oil Corp.*, (C. C. A. 3d Cir. 1917) 245 Fed. 1, 158 C. C. A. 1, *reversing* (W. D. Pa. 1916) 242 Fed. 709.

"Income from all property."—Income from corporate stocks and bonds owned by a nonresident alien and kept in this country by an agent, who collected such income for the owner was taxable under this provision. *De Ganay v. Lederer*, (E. D. Pa. 1917) 239 Fed. 568.

Vol. IV, p. 239, par. B.

Dividends declared and paid in the ordinary course of business by a corporation to its stockholders after the taking effect of the Act, whether from current earnings, or from accumulated surplus made up of past earnings or increase in value of corporate assets, notwithstanding it accrued to the corporation in whole or in part prior to March 1, 1913, were taxable "net income" under this subdivision. *Lynch v. Hornby*, (1918) 247 U. S. 339, 38 S. Ct. 543, 62 U. S. (L. ed.) 1149, *reversing* (C. C. A. 8th Cir. 1916) 236 Fed. 661, 149 C. C. A. 657.

"Controlled by *Lynch v. Hornby*," last above cited was *Peabody v. Eisner*, (1918) 247 U. S. 347, 38 S. Ct. 546, 62 U. S. (L. ed.) 1152, holding that a distribution in specie by a corporation to its stockholders after the effective date of the Income Tax Act, of the holdings of shares of stock in another corporation, which it owned on and prior to that date,

was part of the stockholders' taxable income.

Vol. IV, p. 245, par. G.

Doubt must be resolved against the government where the meaning and scope of language claimed to impose a tax is uncertain. *Scott v. Western Pac. R. Co.*, (C. C. A. 9th Cir. 1917) 246 Fed. 545, 158 C. C. A. 515.

Income prior to March 1, 1913.—The purpose was to exclude from consideration any income that accrued prior to March 1, 1913, especially as the 16th Amendment was not adopted until February, 1913. *Southern Pac. Co. v. Lowe*, (1918) 247 U. S. 330, 38 S. Ct. 540, 62 U. S. (L. ed.) 1142, reversing (S. D. N. Y. 1917) 238 Fed. 847. Compare *Lewellyn v. Gulf Oil Corp.*, (C. C. A. 3d Cir. 1917) 245 Fed. 1, 158 C. C. A. 1, reversing (W. D. Pa. 1916) 242 Fed. 709.

"The word 'income' as used in revenue legislation has a settled legal meaning. The courts have uniformly construed it to include only the receipt of actual cash as opposed to contemplated revenue due but unpaid, unless a contrary purpose is manifest from the language of the statute. . . . Doubtless it was the intention of Congress in legislation of this character to employ terms of sufficient comprehension to reach the actual income of the corporation by foreclosing any possible avenue of escape, but it can hardly be said that in so doing an intention prevailed to tax that which did not actually exist, except on paper, as income during the taxing period." *Maryland Casualty Co. v. U. S.*, (1917) 52 Ct. Cl. 201.

Accumulations accruing prior to Jan. 1, 1913, were capital, not income, for the purposes of the Act. *Southern Pac. Co. v. Lowe*, (1918) 247 U. S. 330, 38 S. Ct. 540, 62 U. S. (L. ed.) 1142.

Receivers of corporations are not taxable under this statute. *Scott v. Western Pac. Co.*, (C. C. A. 9th Cir. 1917) 246 Fed. 545, 158 C. C. A. 515, where one of the reasons for so concluding was that while this statute omits reference to receiver's corporations the Income Tax Law of Sept. 8, 1916, ch. 463, *ante*, this volume, title INTERVAL REVENUE, p. 312, expressly provides for the inclusion of property held by such receivers.

Income derived from the business of shipping goods to foreign countries and there selling them is covered by this statute, which is constitutional in that regard. *Peck v. Lowe*, (1918) 247 U. S. 165, 38 S. Ct. 432, 62 U. S. (L. ed.) 1049.

Where the lessee of a railroad paid, in accordance with provisions in the lease, on stipulated dates in each year, to the persons holding shares of the lessor corporation's stock and certified by it as then entitled to dividends, certain stipulated sums per share held, the amount

so paid was income of the lessor corporation, and did not cease to be such because not paid directly to it. *West End St. R. Co. v. Malley*, (C. C. A. 1st Cir. 1917) 246 Fed. 625, 158 C. C. A. 581, following *Rensselaer v. Irwin*, (N. D. N. Y. 1917) 239 Fed. 739. To the same point under the Corporation Tax Act of Aug. 5, 1909, ch. 6, § 38, 1909 Supp. Appendix, p. 829. *Blalock v. Georgia R., etc., Co.*, (C. C. A. 5th Cir. 1917) 246 Fed. 387, 158 C. C. A. 451.

Vol. IV, p. 255, sec. 38.

I. SUBDIVISION FIRST

2. Construction (p. 261)

"The legislative purpose was not to tax property as such, or the mere conversion of property, but to tax the conduct of the business of corporations organized for profit by a measure based upon the gainful returns from their business operations and property from the time the Act took effect." *Doyle v. Mitchell Bros. Co.*, (1917) 247 U. S. 179, 38 S. Ct. 467, 62 U. S. (L. ed.) 1054.

"The trend of judicial opinion has been to examine closely the phraseology of the Act itself, and it must be construed in favor of taxation." *U. S. v. Guggenheim Exploration Co.*, (S. D. N. Y. 1917) 238 Fed. 231, per Manton, J.

A treasury decision, promulgated for the guidance of revenue collectors, is entitled to some consideration in the construction of the statute, but cannot be given great weight in an action against a collector to recover taxes paid under protest, since the government is the real defendant "and, of course, courts cannot permit a party to a lawsuit to say what the rules of law for the decision shall be." *Grand Rapids, etc., R. Co. v. Doyle*, (W. D. Mich. 1915) 245 Fed. 792.

4. Corporations Subject to Tax (p. 261)

In general—Organized for profit.—The Boston Terminal Company was held under the facts found and stated in *Boston Terminal Co. v. Gill*, (C. C. A. 1st Cir. 1917) 246 Fed. 664, 158 C. C. A. 620, to be a corporation "organized for profit," this conclusion being deemed to find strong support in *Von Baumbach v. Sargent Land Co.*, (1917) 242 U. S. 503, 37 S. Ct. 201, 61 U. S. (L. ed.) 460.

A mutual protective association organized under a state statute, whose only source of revenue was assessments paid by its members, was held, under the facts of the case, to be an "insurance company" and to be "doing business" within the meaning of those terms in this Act. *Commercial Travelers' L., etc., Assoc. v. Rodway*, (N. D. Ohio 1913) 235 Fed. 370.

Corporations formed by the owners of lands for the purpose of handling the property and distributing the proceeds of

its disposition are organized for profit within the meaning of this subdivision. *Von Baumbach v. Sargent Land Co.*, (1917) 242 U. S. 503, 37 S. Ct. 201, 61 U. S. (L. ed.) 460.

5. "Carrying on," "engaged in" or "doing" business (p. 263)

Leasing of property and franchise by corporation.—In *Philadelphia, etc., R. Co. v. Lederer*, (E. D. Pa. 1917) 239 Fed. 184, an action to recover a tax paid under protest, "the facts in relation to the carrying on of business by the plaintiffs, as shown by the various leases under which the railroads were operated, clearly brought all of the plaintiffs within the law as laid down in the *Minehill* case, 226 U. S. 295, 33 S. Ct. 419, 57 U. S. (L. ed.) 842."

"If a corporation is doing the business for which it was organized the income derived from such business is taxable under the Act. . . . If the purpose for which it was organized was to build and lease property, then the rents derived from such lease are taxable, even though thereby the corporation leases all the property and of necessity goes out of all corporate business excepting the collection and distribution of its rents." *Rio Grande Junction R. Co. v. U. S.*, (1916) 51 Ct. Cl. 274.

A street railway corporation which leased its lines and property in 1897 to another corporation, and has not since operated them itself is not a corporation "engaged in business" during that period. *West End St. R. Co. v. Malley*, (C. C. A. 1st Cir. 1917) 246 Fed. 625, 158 C. C. A. 625, where the question was regarded as controlled by the reasoning and result in the following cases: *New York Cent., etc., R. Co. v. Gill*, (C. C. A. 1st Cir. 1915) 219 Fed. 184, 134 C. C. A. 558; *McCoach v. Continental Pass. Co.*, (C. C. A. 3d Cir. 1916) 233 Fed. 976, 47 C. C. A. 650; *Jasher, etc., Co. v. Walker*, (C. C. A. 5th Cir. 1917) 238 Fed. 533, 151 C. C. A. 469.

Realty corporations organized for and actually engaged in such activities as handling large tracts of land owned by such corporations, leasing and selling parcels thereof, disposing of stumpage, seeing that their lessees under mining leases live up to their contracts, and distributing the proceeds of such activities among the stockholders; are "engaged in business" within the meaning of this subdivision. *Van Baumbach v. Sargent Land Co.*, (1917) 242 U. S. 503, 37 S. Ct. 201, 61 U. S. (L. ed.) 460.

6. INCOME (p. 267)

"What is income? The flow of capital's service is its income. A disservice is a negative service. A flow of disservice or negative income is called 'outgo.'"

U. S. v. Guggenheim Exploration Co., (S. D. N. Y. 1917) 238 Fed. 231, per Manton, J.

Net income.—The fair market value as of December 31, 1908, of the stumpage cut and converted by a lumber manufacturing corporation from lands acquired by it prior to the passage of this Act, should be deducted from gross receipts when computing the company's net taxable income for the years in which the timber was converted into money, although the increase in market value over original cost had not been entered on the company's books until after the passage of the statute. *Doyle v. Mitchell Bros. Co.*, (1917) 247 U. S. 179, 38 S. Ct. 467, 62 U. S. (L. ed.) 1054.

The entire proceeds of a mere conversion of capital assets acquired before and converted into money after the taking effect of the Act are not to be treated as income. "In order to determine whether there has been gain or loss and the amount of the gain, if any, we must withdraw from the gross proceeds an amount sufficient to restore the capital value that existed at the commencement of the period." *Doyle v. Mitchell Bros. Co.*, (1917) 247 U. S. 179, 38 S. Ct. 467, 62 U. S. (L. ed.) 1054.

Time of accrual or receipt of income.—This Act measures the tax by the income received within the year for which the assessment was levied, whether it accrued within that year or in some preceding year while the Act was in effect; but it excludes all income that accrued prior to Jan. 1, 1909, although afterward received while the Act was in effect. *Hays v. Gauley Mountain Coal Co.*, (1918) 247 U. S. 189, 38 S. Ct. 470, 62 U. S. (L. ed.) 1061.

In computing gain from a sale of assets bought by a corporation, interest should not be added to the original purchase price in order to ascertain its cost. *Hays v. Gauley Mountain Coal Co.*, (1918) 247 U. S. 189, 38 S. Ct. 470, 62 U. S. (L. ed.) 1061.

So-called royalties received by the corporate owners of lands leased for long terms for the purpose of exploring it, and mining and removing the merchantable iron therein, to persons who agreed to pay monthly a specified sum per ton for all ore mined and shipped the previous month, and to mine and ship a specified quantity of ore each year, and in default of this to pay for the minimum amount specified and take credit therefor, and apply such sums upon ore mined and shipped thereafter in excess of such minimum—are income within the meaning of this subdivision. *Von Baumbach v. Sargent Land Co.*, (1917) 242 U. S. 503, 37 S. Ct. 201, 61 U. S. (L. ed.) 460, *reversing* (C. C. A. 8th Cir. 1914) 219 Fed. 31, 134 C. C. A. 649, which *affirmed* (D. C. Minn. 1913) 207 Fed. 423, *followed in* *U. S. v. Biwabik Min. Co.*, (1918) 247

U. S. 116, 38 S. Ct. 462, 62 U. S. (L. ed.) 1017, *reversing* (C. C. A. 8th Cir. 1917) 242 Fed. 9, 154 C. C. A. 601.

II. SUBDIVISION SECOND (p. 270)

Deductions—Reserve funds of insurance companies.—Amounts of unpaid losses which fire and marine insurance companies are required by the state insurance commissioner, under the authority of Pa. Act June 1, 1911, P. L. 607, to schedule each year as items of liabilities are not "reserve funds" "required by law" within the meaning of this subdivision. *McCoach v. Insurance Co. of North America* (1917) 244 U. S. 585, 37 S. Ct. 709, 61 U. S. (L. ed.) 1333.

Interest on "bonded or other indebtedness."—In *Altheimer, etc., Ins. Co. v. Allen*, (E. D. Mo. 1917) 246 Fed. 270, a corporation doing a brokerage business bought securities for its customers, and carried the same for them. On these purchases the customers paid the corporation only a part of the purchase price, and consequently owed it balances, on which they paid interest to it. The corporation in turn also paid on such purchases only a part of the purchase price, and accordingly owed balances on them on which it paid the interest; but the interest thus received by the corporation from its customers on said purchases exceeded the interest paid by the plaintiff on said purchases. It was held that the interest paid by the corporation on account of the purchases was to be treated as having been made "on its bonded and other indebtedness," and that the entire amount received as interest by the corporation was to be included as gross income.

Expenditures for certain additions and betterments to railroad properties were not to be deducted except to the extent of the cost of such additions and betterments so far as they were mere renewals with like kind and quality, such cost only being chargeable to expenses of maintenance and operation. *Grand Rapids, etc., R. Co. v. Doyle*, (W. D. Mich. 1915) 245 Fed. 792, where the court said: "Every one knows what is usually meant by the operating expenses of a railroad—the payment for labor and materials which go into the actual operating of the road and the property. 'Maintenance,' as used in this statute, fairly means the upkeep or preserving of the condition of the property to be operated, and does not mean additions to the equipment or property, or improvements of former condition of the railroad."

Moneys received for service connections and pipe extensions by a waterworks corporation are not permitted to be deducted from the gross amount of income. "Moneys so expended are invested in permanent improvements which tend to enhance the rental and the market value of

the water system." Nor does it make any difference that the state commission has decided that meters and service connections paid for by consumers are not to be included in the valuation of the water company's plant upon which it is entitled to earn a fair return. *Union Holly-wood Water Co. v. Carter* (C. C. A. 9th Cir. 1917) 238 Fed. 329, 151 C. C. A. 345.

"Taxes imposed under authority of state."—Mississippi Code of 1906, § 4273, is construed by the Supreme Court of the state as imposing a tax not on a bank or its capital, but upon the shareholders, the bank being required to pay for them. Hence amounts paid by a bank under that statute were not for "taxes imposed" within the meaning of those words in the federal Corporation Tax Act. *Jackson First Nat. Bank v. McNeel*, (C. C. A. 5th Cir. 1917) 238 Fed. 559, 151 C. C. A. 495.

Depreciation.—A mining corporation is not entitled to deduct from its gross income any amount whatever on account of depletion or exhaustion of ore bodies caused by its operations for the year for which the tax is assessed, nor is it entitled to a deduction against gross proceeds from the mining and treatment of ores to the extent of the cost value of the ore in the ground before it was mined, ascertained in strict compliance with the rules and regulations of the Treasury Department. *Goldfield Consol. Mines Co. v. Scott*, (1918) 247 U. S. 126, 38 S. Ct. 465, 62 U. S. (L. ed.) 1022.

The market value of ore in place on premises at the beginning of the tax period may not be deducted when ascertaining the net income of a corporation which has leased certain lands for the purpose of exploring for and mining and removing the merchantable iron ore therein, and had agreed to pay monthly a specified sum per ton for all ore mined and shipped the previous month, and to mine and ship a specified quantity of ore each year, and, in default of this, to pay for the minimum amount specified and take credit therefor, and apply such sums upon ore mined and shipped thereafter in excess of such amount. The lessee is in no sense a purchaser of ore in place. *U. S. v. Biwabik Min. Co.*, (1918) 247 U. S. 116, 38 S. Ct. 462, 62 U. S. (L. ed.) 1017, *reversing* (C. C. A. 6th Cir. 1917) 242 Fed. 9, 154 C. C. A. 601.

Exhaustion of the ore body resulting from the process of mining is not an element to be considered in determining reasonable "depreciation" under this subdivision. *Von Baumbach v. Sargent Land Co.*, (1917) 242 U. S. 503, 37 S. Ct. 201, 61 U. S. (L. ed.) 460.

IV. SUBDIVISION FOURTH (p. 273)

"Real facts," and not "bookkeeping facts" determine the net income of a corporation. *U. S. v. Guggenheim Ex-*

ploration Co., (S. D. N. Y. 1917) 238 Fed. 231.

V. SUBDIVISION FIFTH (p. 278).

Action to recover—*In general*.—"In the collection of the taxes imposed by the statute, the government is not confined to the summary proceedings therein provided, but may resort to a plenary suit." U. S. v. Grand Rapids, etc., R. Co., (W. D. Mich. 1915) 239 Fed. 153.

Limitation.—The three-year clause of this subdivision "is not a limitation upon the right of the government to sue for unpaid taxes but, at most, is a limitation upon the right of the collecting officers to make assessment and to enforce payment by the summary statutory proceedings." U. S. v. Grand Rapids, etc., R. Co., (W. D. Mich. 1915) 239 Fed. 153.

Assessment as condition precedent.—Where a tax of a fixed percentage, as here, is imposed by statute on a subject or object which is so definitely described in the statute that its amount or value, on which the fixed per centum is to be calculated, can be ascertained and determined, on evidence, by a court, a suit for the tax will lie, without an assessment. U. S. v. Grand Rapids, etc., R. Co., (W. D. Mich. 1915) 239 Fed. 153 and numerous cases there cited.

Burden of proof.—In an action by the government to collect an excise tax on the amount received on the sale of stock in another corporation owned by the defendant, which the latter had carried on its books at the valuation of \$1, the burden was upon the plaintiff to show by a fair preponderance that the stock was worth

but \$1. U. S. v. Guggenheim Exploration Co., (S. D. N. Y. 1917) 238 Fed. 231.

Vol. IV, p. 277, sec. 1.

Effect on state legislation.—This Act "has no application and makes no reference to maintaining and operating places for the purpose of carrying on and engaging in the business of dealing in futures on margin," and therefore does not invalidate Georgia Code of 1910, § 4257. Arthur v. State, (1917) 146 Ga. 827, 92 S. E. 637.

Vol. IV, p. 297.

Tax on "offers".—The total price at which each seller agrees to sell must be the basis upon which the tax on "offers" is computed, and not merely the amount received by the broker for negotiating the deal. Calkins v. Smietanka, (N. D. Ill. 1917) 240 Fed. 138.

Failure to reduce agreements to writing and attach the stamp cannot relieve them from the tax. Calkins v. Smietanka, (N. D. Ill. 1917) 240 Fed. 138.

An agreement once subject to the tax cannot later be relieved of that burden by any action of the parties. Calkins v. Smietanka, (N. D. Ill. 1917) 240 Fed. 138.

Vol. IV, p. 305, sec. 23.

Relief from the penalty provided by this section is not afforded by reason of the provision in section 22 of the same Act which makes default, when accompanied by criminal intent, a misdemeanor. Kohlhamer v. Smietanka, (N. D. Ill. 1917) 239 Fed. 408.

INTERSTATE COMMERCE

Vol. IV, p. 337, sec. 1[A].

VI. Validity of state statutes.

5. Furnishing cars.

7. Regulating liability.

VIII. Persons, etc., subject to Act.

2. Telegraph companies.

IX. Commerce as interstate or intrastate.

VI. VALIDITY OF STATE STATUTES

5. *Furnishing Cars* (p. 341)

As opposing of the view taken in the original note see Baird v. Minneapolis, etc., R. Co., (Ia. 1917) 165 N. W. 412.

7. *Regulating Liability* (p. 343)

A state statute making a bill of lading, acquired in good faith and for value, conclusive that the carrier issuing the same received the goods therein specified for

transportation, has no application and no effect where the liability of the common carriers arises out of the issuance of an interstate bill of lading. Lowitz v. Chicago, etc., R. Co., (1917) 136 Minn. 227, 161 N. W. 411.

VIII. PERSONS, ETC., SUBJECT TO ACT

2. *Telegraph Companies* (p. 343)

In general.—To the same effect as the original note see Western Union Tel. Co. v. Hawkins, (Ala. 1917) 73 So. 973; Western Union Tel. Co. v. Smith, (Ala. 1917) 75 So. 393; Western Union Tel. Co. v. Showers, (1916) 112 Miss. 411, 73 So. 276; Western Union Tel. Co. v. Bolling, (1917) 120 Va. 413, 91 S. E. 164, Ann. Cas. 1918C 1036.

The case of Dickerson v. Western Union Tel. Co., (1917) 114 Miss. 115, 74 So. 779, holds contrary to the original note that state laws may regulate even inter-

state message where the regulations are not in conflict with federal regulation.

Message sent to place in same state through another state.—A telegraph company in the transmission of a message from one point in the state to another point in the same state where the usual, customary, and necessary route for the transmission thereof is over the company's line, a part of which is located outside of the state, is engaged in an act of interstate commerce, and the same is subject to and controlled by the federal law applicable thereto. *Western Union Tel. Co. v. Kaufman*, (Okla. 1917) 162 Pac. 708.

Telephone companies.—The Interstate Commerce Act requires telephone companies to afford all reasonable facilities for the transaction of business for which they are chartered. The same law and procedure are applicable to them which safeguard public and private interests in the operation of any other business engaging in interstate commerce. *Stephens v. Ohio State Telephone Co.*, (N. D. Ohio 1917) 240 Fed. 759.

IX. COMMERCE AS INTERSTATE OR INTRASTATE (p. 348)

Whether commerce is interstate or intrastate must be determined by its essential character and not by mere billing or forms of contract. Goods actually destined for points beyond the state of origin are necessarily in interstate commerce when they are delivered to the carrier and start in the course of transportation to another state. This is true whether the goods are shipped on through bills of lading or on initial bills only to a terminal within the same state, where they are transhipped and thereafter transported on new bills of lading to a destination beyond the state. *McFadden v. Alabama Great Southern R. Co.*, (C. C. A. 3d Cir. 1917) 241 Fed. 562, 154 C. C. A. 338.

Although the point of shipment and the point of delivery are within the same state, if during the course of transportation the property passes without the boundaries of the state, such a shipment is interstate commerce. *Illinois Cent. R. Co. v. Rogers*, (1917) 116 Miss. 99, 76 So. 686.

The principle, above stated, applies to telegraphic messages between points within the state, which in the course of their transmission pass without the state into any other state. *Western Union Tel. Co. v. Bolling*, (1917) 120 Va. 413, 91 S. E. 154, Ann. Cas. 1918C 1036.

Vol. IV, p. 351, sec. 1 [B].

V. "TRANSPORTATION" AS INCLUDING WHAT

2. Warehouseman's Service (p. 354)

To the same effect as the original note see *United Metals Selling Co. v. Pryor*,

(C. C. A. 8th Cir. 1917) 243 Fed. 91, 155 C. C. A. 621.

VI. FURNISHING TRANSPORTATION UPON REASONABLE REQUEST (p. 354)

State statute affecting.—The power of a state to enact that four passenger trains each way, if so many are run daily, Sundays excepted, shall stop at all county-seat stations, was not taken away, though it may lead to an incidental interference with interstate trains, by this section making it the duty of carriers to make reasonable regulations affecting transportation facilities,—so long as there is no conflict between such enactment and the regulations of the Interstate Commerce Commission. *Gulf, etc., R. Co. v. Texas*, (1918) 246 U. S. 58, 38 S. Ct. 236, 62 U. S. (L. ed.) 574, *affirming* (Tex. Civ. App. 1914) 169 S. W. 385.

Vol. IV, p. 355, sec. 1 [C].

II. "JUST AND REASONABLE" CHARGES

8. Telegraph Messages (p. 358)

Limitation of liability.—To the same effect as the original note see *Western Union Tel. Co. v. Hawkins*, (Ala. 1917) 73 So. 973; *Western Union Tel. Co. v. Petteway*, (Ga. App. 1918) 94 S. E. 1032; *Meadows v. Postal Tel., etc. Co.*, (1917) 173 N. C. 240, 91 S. E. 1009; *Kirah v. Postal Tel. Co.*, (1917) 100 Kan. 250, 164 Pac. 287; *Western Union Tel. Co. v. Kaufman*, (Okla. 1917) 162 Pac. 708.

Whether a provision on the back of a telegraph blank limiting the liability of the company for mistakes and delays in the case of unrepeated messages is reasonable is a question for the Interstate Commerce Commission and a state court is without jurisdiction in the matter. *Haskell Implement, etc., Co. v. Postal Tel. Cable Co.*, (1915) 114 Me. 277, 96 Atl. 219; *Western Union Tel. Co. v. Showers*, (1916) 112 Misc. 411, 73 So. 276.

"Exchange of service."—The right to exchange implies the right to fix the rate, method, or amount of exchange. *Baltimore, etc., R. Co. v. Western Union Tel. Co.*, (C. C. A. 2d Cir. 1917) 242 Fed. 914, 155 C. C. A. 502, *affirming* (S. D. N. Y. 1917) 241 Fed. 162.

A carrier or telegraph company may not render "off-line" service to the other at a rate other than that published in the regular schedule and different from the rate charged the general public. Such service is not the "exchange of service" referred to in the statute. *Chicago, Great Western R. Co. v. Postal Tel. Cable Co.*, (N. D. Ill. 1917) 245 Fed. 592.

Vol. IV, p. 359, sec. 1 [E].

II. PERSONS EXCEPTED (p. 360)

Caretakers of live stock.—To the same effect as the original note see *Tripp v.*

Michigan Cent. R. Co., (C. C. A. 6th Cir. 1917) 238 Fed. 449, 151 C. C. A. 385, L. R. A. 1918A 758.

A person in charge of an interstate shipment of the live stock, traveling on a freight train upon a pass issued pursuant to the terms of the contract of shipment, as permitted by this section, which excepts necessary caretakers of live stock from the prohibition against the issuance of any "interstate free pass," must be regarded as a passenger for hire, to whom the carrier must respond in damages in case of his injury through the carrier's negligence, notwithstanding a stipulation in the contract purporting to release the carrier from all liability for any personal injury which he may sustain. *Norfolk Southern R. Co. v. Chatman*, (1917) 244 U. S. 276, 37 S. Ct. 499, 61 U. S. (L. ed.) 1131, L. R. A. 1917F 1128, *affirming* (C. C. A. 4th Cir. 1915) 222 Fed. 802, 138 C. C. A. 350.

A notice to shippers that return passes to caretakers of live stock will not be allowed is all that can be claimed for a provision in a carrier's published tariff that "free or reduced transportation shall not be issued for shippers or caretakers in charge of live-stock shipments, whether carloads or less, and such shippers or caretakers shall pay full fare returning." Such provision implies that passes will be issued by the carrier to the destination of the shipment. *Norfolk Southern R. Co. v. Chatman*, (1917) 244 U. S. 276, 37 S. Ct. 499, 61 U. S. (L. ed.) 1131, L. R. A. 1917F 1128, *affirming* (C. C. A. 4th Cir. 1915) 222 Fed. 802, 138 C. C. A. 350.

The failure of the published tariffs of a carrier to make a separate rate, payable in money, for the carriage of a caretaker of an interstate shipment of live stock, or to state separately how much of the published rate for which the carrier is to transport the live stock and their caretaker to destination is to be treated as payment for the transportation of the stock and how much for the carriage of the caretaker, does not make the latter's presence on a freight train in charge of the shipment unlawful, so as to defeat his right to recover damages in case of injury through the carrier's negligence, since, by sec. 6, *infra*, p. 1072, the determining and prescribing of the form in which tariff schedules shall be prepared and arranged is committed to the Interstate Commerce Commission, this obviously being an administrative function with which the courts will not interfere in advance of a prior application to the Commission. *Norfolk Southern R. Co. v. Chatman*, (1917) 244 U. S. 276, 37 S. Ct. 499, 61 U. S. (L. ed.) 1131, L. R. A. 1917F 1128, *affirming* (C. C. A. 4th Cir. 1915) 222 Fed. 802, 138 C. C. A. 350.

IV. INJURIES RECEIVED WHILE RIDING ON FREE PASS (p. 362)

Rule stated.—To the same effect as the original note see *Illinois Cent. R. Co. v. Cole*, (1917) 113 Miss. 896, 74 So. 766.

Vol. IV, p. 371, sec. 2.

III. UNJUST DISCRIMINATION

2. What Constitutes (p. 373)

A lease from an interstate carrier of a wagon factory was held to contain provisions conferring a bonus or benefit on the lessee, or his assignee, as a shipper of freight, which the carrier did not and could not confer on other shippers, and had the effect of making the rates paid on shipments controlled by the tenant less than those named in the lessor's published and filed tariffs. *Central of Georgia R. Co. v. Blount*, (C. C. A. 5th Cir. 1917) 238 Fed. 292, 151 C. C. A. 308.

IV. REBATES (p. 378)

Rebate to lessee.—In *New Jersey Cent. R. Co. v. U. S.* (C. C. A. 3d Cir. 1915) 229 Fed. 501, 143 C. C. A. 569, it was held that the defendant, a lessee of a railroad owned by a coal mining company which which gave the lessor better rates than the tariff schedule called for was guilty of unlawful practices.

Allowance for distribution of cars.—Transportation includes delivery and whatever is essential in order to complete delivery the carrier must do. That is what it is paid for when it collects its regular rates. If it fails to make delivery, and the consignee through its own instrumentalities completes the work, an allowance is due. But no allowance is due for service rendered by the consignee after delivery has been made and transportation is at an end. An allowance in such circumstances would constitute an unlawful rebate. That is true of interstate shipments under the laws of Congress. *New York Cent., etc., R. Co. v. General Electric Co.*, (1916) 219 N. Y. 227, 114 N. E. 115 (*reversing* (1915) 167 App. Div. 726, 153 N. Y. S. 478), wherein it was held that delivery did not require a railroad to distribute cars along a net work of rails in a gigantic manufacturing plant and if the consignee did this it would not be entitled to an allowance from the published railroad rates.

Vol. IV, p. 379, sec. 3.

III. UNDUE OR UNREASONABLE PREFERENCE OR ADVANTAGE

2. Similarity of Circumstances and Conditions (p. 383)

Preference between localities.—The power of Congress and of the Interstate

Commerce Commission to prevent interstate carriers from practicing discrimination against a particular locality is not confined to those whose rails enter it. "Localities require protection as much from combinations of connecting carriers as from single carriers whose rails reach them." *St. Louis Southwestern R. Co. v. U. S.* (1917) 245 U. S. 136, 38 S. Ct. 49, 62 U. S. (L. ed.) 199, *affirming* (W. D. Ky. 1916) 234 Fed. 688.

5. Rates and Charges (p. 397)

Special understanding as to freight charge.—It is unavailing as a defense to an action for the charges on an interstate freight shipment that the shipper had long been a patron of the railway company and had a special understanding and custom in his dealings with the company whereby the carrier was to be the agent of the consignee as to all shipments delivered by defendant, and that he guaranteed the freight charges, only upon condition that he should be promptly notified by the carrier if any consignee refused to accept a shipment and refused to pay the freight charges thereon. All special arrangements, agreements, customs, and understandings between individual shippers and interstate railroads, not open to all similar shippers on equal terms, nor on file with the Interstate Commerce Commission nor sanctioned by that tribunal, are void, and a defense to an action for interstate freight charges based thereon is subject to demurrer on motion for judgment. *Atchison, etc., R. Co. v. Stannard*, (1917) 99 Kan. 720, 162 Pac. 1176, L. R. A. 1917C 1124.

Vol. IV, p. 396, sec. 4.

I. DECISION UNDER AMENDMENT OF 1910

6. Hearing (p. 399)

For evidence held sufficient to support an order of the Commission denying an application for relief from the operation of the long and short haul clause of this section see *Louisville, etc., R. Co. v. U. S.*, (1918) 245 U. S. 463, 38 S. Ct. 141, 62 U. S. (L. ed.) 400, *affirming* (W. D. Ky. 1916) 225 Fed. 571.

Vol. IV, p. 404, sec. 5.

II. DECISIONS UNDER SECOND PARAGRAPH (p. 405)

Finality of Commission's findings.—A court of equity is without jurisdiction to enjoin the enforcement of an order of the Interstate Commerce Commission refusing, on the ground of real or possible competition, to grant an extension of time for compliance with the provisions of the second paragraph of this section which

prohibited after July 1, 1914, any ownership by a railroad in any common carrier by water when the railroad might compete for traffic with the water carrier, and empowered the Commission to determine questions of fact as to such competition, and to extend the time if the extension would not exclude or reduce competition on the water route, since the order of the Commission was negative in substance as well as form, and the risk to which the railway company was left subject did not come from the order, but from the statute. *Lehigh Valley R. Co. v. U. S.*, (1917) 243 U. S. 412, 37 S. Ct. 397, 61 U. S. (L. ed.) 819, *affirming* (E. D. Pa. 1916) 234 Fed. 682.

Vol. IV, p. 406, sec. 6[A].

IV. Contents, construction and sufficiency of schedule.

2. Accessorial services and allowances.

4. Demurrage.

VI. Effect of published rates.

1. In general.

3. Contracts of transportation.

IV. CONTENTS, CONSTRUCTION AND SUFFICIENCY OF SCHEDULE

2. Accessorial Services and Allowances (p. 409)

Livestock caretakers.—Separate schedules need not be made showing the fares charged for carrying live stock caretakers. *Tripp v. Mich. Cent. R. Co.*, (C. C. A. 6th Cir. 1917) 236 Fed. 449, 151 C. C. A. 365, L. R. A. 1918A 768.

4. Demurrage (p. 410)

An interstate carrier may lawfully adopt a demurrage rule exacting demurrage charges on private cars detained on the carrier's tracks while still in railroad service. *Swift v. Hocking Valley R. Co.*, (1917) 243 U. S. 281, 37 S. Ct. 287, 61 U. S. (L. ed.) 722, *affirming* (1916) 93 Ohio St. 143, 112 N. E. 212, L. R. A. 1917E 916.

VI. EFFECT OF PUBLISHED RATES

1. In General (p. 415)

A published tariff, so long as it is in force, has the effect of a statute and is binding on carrier and shipper. *Moore v. Duncan*, (C. C. A. 6th Cir. 1916) 237 Fed. 780, 150 C. C. A. 534.

The freight charges for the transportation of an interstate shipment are fixed by the schedules and joint tariffs then in effect, and filed and posted; and though

a common carrier, by mistake or otherwise, delivers goods upon the payment of a lower rate than that stated in the tariffs, it may thereafter demand and recover of the consignee (who has adopted the carrier's contract of affreightment with the shipper) the difference between the amount of freight charges actually paid to the transportation company and the amount due upon the basis of the correct rate for the service rendered via the route selected by the consignee and specified in the bill of lading by the shipper. Upon the refusal of the consignee to pay such undercharge the transportation company may maintain and recover in an action therefor. *Central of Georgia R. Co. v. O'Neill Mfg. Co.*, (1917) 19 Ga. App. 490, 91 S. E. 877.

3. Contracts of Transportation (p. 416)

Generally.—To the same effect as the original note see *St. Louis, etc., R. Co. v. McNabb*, (Okla. 1917) 162 Pac. 811.

Secondary evidence.—The published schedule rates filed and approved by the Interstate Commerce Commission are the best evidence of the tariff in force fixing the legal rates upon a shipment between certain points, and evidence as to statements made by the carrier's agent is inadmissible to establish the correct rate. *St. Louis, etc., R. Co. v. McNabb*, (Okla. 1917) 162 Pac. 811.

Limitation of liability.—A shipper of live stock in interstate commerce is bound by stipulations in the bill of lading in conformity with the carrier's official tariffs, classifications, and rules duly published and filed with the Interstate Commerce Commission, limiting liability to an agreed value on which a reduced rate was based, and conditioning any liability upon the giving of written notice to the terminal carrier within five days after the stock was removed from the cars at destination. *Erie R. Co. v. Stone*, (1917) 244 U. S. 332, 37 S. Ct. 633, 61 U. S. (L. ed.) 1173.

A released valuation clause in an interstate bill of lading, based upon a difference in the carrier's tariffs on file with the Interstate Commerce Commission, is valid and controlling, although the loss occurs while the freight is in the carrier's warehouse at an intermediate point, conformably to the provisions of one of such tariffs, which confers the right in transit of free storage and diversion at that point, the bill of lading reciting that the shipment is to be held at that point for orders, and providing that every service to be performed thereunder is subject to all the conditions therein contained. *Western Transit Co. v. Leslie*, (1917) 242 U. S. 448, 37 S. Ct. 133, 61 U. S. (L. ed.) 423,

reversing (1914) 165 App. Div. 947, 150 N. Y. S. 1073.

Vol. IV, p. 421, sec. 6[G].

- II. Through rates.
- III. Greater or less or different compensation.
- 2. Money compensation.
- IV. Privileges and facilities.

II. THROUGH RATES (p. 422)

The aggregate of two rates, one intrastate for a part of a given transportation and the other interstate for the rest of it, is not the legal rate for interstate shipments, when there is at the same time a duly established through rate for the same transportation. *McFadden v. Alabama Great Southern R. Co.*, (C. C. A. 3d Cir. 1917) 241 Fed. 562, 154 C. C. A. 338, *affirming* (E. D. Pa. 1916) 232 Fed. 1000.

III. GREATER OR LESS OR DIFFERENT COMPENSATION

2. Money Compensation (p. 422)

A plea of recoupment for injuries to goods in transit can not, it has been held, be set up by a shipper when sued by a common carrier for freight charges on such goods for freight can only be paid in cash and a set-off would open the door to fraud and discrimination. *Johnson-Brown Co. v. Delaware, etc., R. Co.*, (S. D. Ga. 1917) 239 Fed. 590, *following* *Chicago, etc., R. Co. v. William S. Stein Co.*, (D. C. Neb. 1915) 233 Fed. 716; *Illinois Cent. R. Co. v. Hooper*, (S. D. Ia. 1916) 233 Fed. 135. But in *Fargo v. Cuneo*, (S. D. N. Y. 1917) 241 Fed. 727, a different view was taken.

IV. PRIVILEGES AND FACILITIES (p. 424)

In general.—This section requires the tariffs filed by carriers with the Interstate Commerce Commission to show all privileges and facilities granted or allowed, and all shippers and carriers are charged with notice of the existence thereof. *St. Louis, etc., R. Co. v. Bondies*, (Okla. 1917) 166 Pac. 179.

Charges for wharfage and handling of goods cannot be collected when such charges are not specified in the tariff schedule. *Southern Cotton Oil Co. v. Central of Georgia R. Co.*, (C. C. A. 5th Cir. 1915) 228 Fed. 335, 142 C. C. A. 627 (*affirming* (E. D. Ga. 1913) 204 Fed. 476), wherein the court said: "It appears from the statement of facts that the only schedule ever filed by the defendant which specified this charge for wharfage and handling was one which, in a proceeding instituted by the defendant before the

Interstate Commerce Commission and before this suit was brought, was directed by that body to be canceled. The effect of that decision, which, so far as appears, has not been directly attacked, was to eliminate such allowances from the filed tariff. *American Sugar Refinery Co. v. Delaware, L. & W. Ry. Co.*, (D. C.) 200 Fed. 652."

Storage charges.—Where a railroad files a tariff providing for storage charges in case goods are not unloaded within the free time therein specified the railroad has no option but to collect them and it has a lien on the goods. And in case the railroad has transported to the seaboard goods to be delivered by it to a steamship company to be carried to a foreign port and those goods as against the shipper are subject to storage charges for which the railroad has a lien, the steamship company by accepting the goods impliedly agrees to be responsible for those charges. *Boston, etc., R. Co. v. Oceanic Steam Nav. Co.*, (1917) 226 Mass. 509, 116 N. E. 260.

Vol. IV, p. 430, sec. 8.

Amount of recovery.—All the damages that properly can be attributed to a carrier's overcharge, whether it be the keeping of the shipper out of its money, or the damage to its business following as a remoter result of the same cause, must be deemed to have been included in an award by the Interstate Commerce Commission of a sum of money to a shipper as reparation for unreasonable rates, pursuant to the provisions of sections 8, 9, 13, which contemplates the recovery of all damages sustained through violations of the Act, either before the Commission or in the courts, requiring, however, an election between the two methods of procedure; and a satisfaction of the Commission's award precludes any recovery in a subsequent action in a state court for any damages arising out of such overcharge. *Louisville, etc., R. Co. v. Ohio Valley Tie Co.*, (1916) 242 U. S. 288, 37 S. Ct. 120, 61 U. S. (L. ed.) 305, reversing (1914) 161 Ky. 212, 170 S. W. 633.

In an action by a shipper to recover of a common carrier damages awarded by the Interstate Commerce Commission on account of unjust and unreasonable rates charged and collected for goods transported by the carrier for the shipper it is not a defense that the freight paid was passed along to the ultimate purchaser, and the difference between the reasonable and the unreasonable charge is the proper measure of damages. *New York, etc., R. Co. v. Ballou*, (C. C. A. 9th Cir. 1917) 242 Fed. 862, 155 C. C. A. 450. Compare as to whether the measure of damages should be the difference between the reasonable and unreasonable charge, *Atchison, etc., R. Co. v. Spiller*, (C. C. A. 8th Cir. 1917) 246 Fed. 1, 158 C. C. A. 227.

Vol. IV, p. 432, sec. 9.

- I. In general.
- II. Exclusiveness of remedies.
- III. Jurisdiction of courts.
 1. Federal.
- IV. Preliminary investigation by commission.
- V. Parties.
- VI. Limitation of actions.

I. IN GENERAL (p. 433)

A plaintiff, who brings his action at law for a cause of action arising under the provisions of the Interstate Commerce Law, must (as every plaintiff must, make out his case. If he has been damaged by a car distribution made in accordance with a system or rule of distribution adopted by a railroad carrier and filed with the Commission in accordance with the requirements of the statutes, he has not suffered a legal injury, unless the distribution be one of the character condemned by law. This he must prove, and he can prove it only by a finding of the Commission. In consequence he is driven to go first to the Commission for all the administrative findings. The reason for this lies on the surface of things. When, however, these have been found, either on complaint of our supposititious plaintiff or of some one before him, then he may bring his action at law and can recover. He can recover, because he can make out his case first by proving (through the finding of the Commission) that the system of car distribution enforced by the carrier defendant was unjust and discriminatory; and, secondly, that he has been damaged thereby, and to what amount. He is only compelled to go to the Commission when his case depends upon the administrative finding that the rule of car distribution of which he complains is an improper one. If the carrier has adopted and filed a fair and proper rule, or one has been found by the Commission, and the cause of action arises out of an unjust and discriminatory departure from it, causing damage, this fact may be established in an action at law, and no preliminary recourse to the Commission is necessary. *Hillsdale Coal, etc., Co. v. Pennsylvania R. Co.*, (E. D. Pa. 1916) 237 Fed. 272.

II. EXCLUSIVENESS OF REMEDIES (p. 433)

Rule stated.—The common-law right of a shipper to have his goods carried at a reasonable rate of compensation is recognized in the provision of section 1, that all charges made by common carriers for services rendered in interstate transportation shall be just and reasonable. A shipper, unless inhibited by statute, may always invoke the aid of the courts to protect himself against an unreasonable

exaction of charges. Thus he is entitled at common law to his action in damages for the exaction of an unreasonable rate. This common-law remedy is, however, so abrogated by the Interstate Commerce Act that a shipper cannot now, consistently with its provisions, maintain his common-law action for excessive rates exacted on interstate shipments, where such rates have been duly published by the carrier and not found by the company to be unreasonable; and in such case a shipper must primarily invoke redress through the commission, which body alone is vested with power originally to entertain proceedings for the alteration of an established schedule, because the rates fixed therein are unreasonable. *McLean Lumber Co. v. U. S.*, (E. D. Tenn. 1916) 237 Fed. 460.

III. JURISDICTION OF COURTS

1. Federal (p. 433)

Generally.—Federal District Courts have jurisdiction to construe tariffs and determine what rates are applicable under them to given shipments. *National Elevator Co. v. Chicago, etc. R. Co.*, (C. C. A. 8th Cir. 1917) 246 Fed. 588, 158 C. C. A. 558.

An action by one carrier against another carrier is maintainable where the defendant demanded of the plaintiff and received more than his share of freight charges for goods transported over both roads. *Mobile, etc., R. Co. v. Washington, etc., R. Co.*, (S. D. Ala. 1917) 242 Fed. 531.

Jurisdiction in equity.—The interest of a shipper in the rate which he is required to pay for the transportation of his property in the necessary conduct of his business is such a direct pecuniary interest and property right as to give him the necessary standing in a court of equity for its protection. *McLean Lumber Co. v. U. S.*, (E. D. Tenn. 1916) 237 Fed. 460.

IV. PRELIMINARY INVESTIGATION BY COMMISSION (p. 436)

In general.—Jurisdiction of a suit by a shipper to recover amounts paid for shipments over an interstate route between two points, both within the state, in excess of what would have been payable under the state law if the shipments had been made over an intrastate route, may not be assumed in advance of a determination by the Interstate Commerce Commission of the administrative question as to the reasonableness of the carrier's practice, because of the grades of the two lines, in routing west-bound shipments over the longer interstate route, and east-bound shipments over the shorter intrastate route. *Northern Pac. Co. v. Solum*, (1918) 247 U. S. 477, 38 S. Ct. 550, 62 U. S. (L. ed.) 1221.

Railroad restaurant.—The question of whether a railroad company can lawfully run a restaurant in connection with the operation of its road is an administrative one, and must be referred to the Interstate Commerce Commission for its consideration and determination as a condition precedent to a suit by the owner of a restaurant against a railroad company for running a restaurant in competition with his. *Montgomery v. Chicago, etc., R. Co.*, (C. C. A. 8th Cir. 1915) 228 Fed. 616, 143 C. C. A. 138.

V. PARTIES (p. 438)

Partnership.—The right of action given by the Interstate Commerce Laws to a partnership to recover damages suffered by it through the discriminatory acts and unfair practices of a railroad carrier is not lost in whole or part by the death of one of the partners. The common-law rule that personal actions die with the person has no application. The jury, in assessing damages, may consider as an element the lapse of time between the incurring of the damage and the rendering of the verdict, and allow for this in the assessment. Such element of damage, however, could not exceed the equivalent in amount of lawful interest. *Minds v. Pennsylvania R. Co.*, (E. D. Pa. 1916) 237 Fed. 267.

VI. LIMITATION OF ACTIONS (p. 438)

Undercharge.—In action by a carrier against a shipper, brought in a federal court, for the amount of an interstate freight undercharge, a state statute of limitations can operate to bar a recovery. *Chicago, etc., R. Co. v. Ziebarth*, (C. C. A. 8th Cir. 1917) 245 Fed. 334, 157 C. C. A. 526.

Vol. IV, p. 439, sec. 10 [A]

State statute.—This paragraph relates specifically to and provides for only such conduct as is the result of deliberation and intention, and do not relate to mere neglect in individual cases provided against by a state statute providing a penalty for the failure of a telegraph company to deliver a telegram "with impartiality and in good faith, and in the order of time in which they are received." *Western Union Tel. Co. v. Boegli*, (Ind. 1917) 115 N. E. 773.

Vol. IV, p. 448, sec. 12.

II. POWERS AND DUTIES OF COMMISSION (p. 451)

Furnishing cars to shippers.—The Interstate Commerce Commission was given no power to order a carrier to provide and furnish to shippers tank cars for interstate shipments of petroleum products by the amendment of the Act of June 29,

1906, to the Act of Feb. 4, 1887, § 1, defining the term "transportation" as including "cars and other vehicles and all instrumentalities and facilities of shipment or carriage, irrespective of ownership or of any contract, express or implied, for the use thereof and all services in connection with the receipt, delivery, elevation, and transfer in transit, ventilation, refrigeration or icing, storage and handling of property transported," and making it the duty of every carrier subject to the provisions of the Act "to provide and furnish such transportation upon reasonable request therefor," although by section 12, as amended by the Act of March 2, 1889, the Commission was authorized and required to execute and enforce the provisions of the Act, and by section 13, as amended by the Act of June 18, 1910, was given power to enter orders not only regarding rates, but regarding classifications, regulations, or practices, whether affecting rates or not. If any duty to furnish such cars exists, it is enforceable in the courts, not by the Commission. *U. S. v. Pennsylvania R. Co.*, (1916) 242 U. S. 208, 37 S. Ct. 95, 61 U. S. (L. ed.) 251, *affirming* (W. D. Pa. 1915) 227 Fed. 911.

Mandamus.—Error on the part of the Interstate Commerce Commission in declaring that a cause is not within its jurisdiction may be corrected by the courts on petition for mandamus, where such erroneous decision cannot be reviewed on appeal or writ of error. *Louisville Cement Co. v. Interstate Commerce Commission*, (1918) 246 U. S. 638, 38 S. Ct. 408, 62 U. S. (L. ed.) 914, *reversing* (1914) 42 App. Cas. (D. C.) 514.

IV. ATTENDANCE AND TESTIMONY OF WITNESSES (p. 452)

Scope of examination.—The Interstate Commerce Commission has power to require the president of an interstate railway company to answer questions as to supposed political activities and efforts to suppress competition on the part of such company when they are incidental to the questions whether the amount subscribed or expended for such purpose was charged to operating or legal expenses, under this section authorizing the Commission to inquire into the management of the business of carriers and keep itself informed as to the "manner and method" in which the same is conducted, and giving it the right to obtain from the carriers, full and complete information, and section 20, empowering it to require detailed accounts of all expenditures and revenues of carriers, and a complete exhibit of their financial operations, and to prescribe the forms of accounts, records, and memoranda to be kept. *Smith v. Interstate Commerce Commission*, (1917) 245 U. S. 33, 47, 38 S. Ct. 30, 34, 62 U. S. (L. ed.)

135, 141; *Jones v. Interstate Commerce Commission*, (1917) 245 U. S. 48, 38 S. Ct. 34, 62 U. S. (L. ed.) 142.

Vol. IV, p. 457, sec. 14.

Report—Findings of fact.—Formal and precise findings by the Interstate Commerce Commission are unnecessary in orders affecting railway rates, except where damages or reparation are awarded. *Manufacturers R. Co. v. U. S.*, 246 U. S. 457, 38 S. Ct. 383, 62 U. S. (L. ed.) 831.

Vol. IV, p. 458, sec. 15 [A].

II. Regulation of rates.

1. Power of commission.
2. Power of courts.
3. Hearing.
5. Review.

II. REGULATION OF RATES

1. Power of Commission (p. 460)

Intrastate rates.—To the same effect as the original note see *State v. American Express Co.*, (1917) 38 S. D. 227, 161 N. W. 132.

Congress could and did invest the interstate Commerce Commission with authority to remove an existing discrimination against interstate commerce by directing a change of an intrastate rate prescribed by state authority. *American Express Co. v. South Dakota*, (1917) 244 U. S. 617, 37 S. Ct. 656, 61 U. S. (L. ed.) 1352, *modifying* decree in (1917) 38 S. D. 227, 161 N. W. 132.

"1. Under the commerce clause of the Constitution Congress has ample power to prevent the common instrumentalities of interstate and intrastate commerce, such as the railroads, from being used in their intrastate operations in such manner as to affect injuriously traffic which is interstate.

"2. Where unjust discrimination against interstate commerce arises out of the relation of intrastate to interstate rates this power may be exerted to remove the discrimination, and this whether the intrastate rates are maintained under a local statute or by the voluntary act of the carrier.

"3. In correcting such discrimination Congress is not restricted to an adjustment or reduction of the interstate rates, but may prescribe a reasonable standard to which they shall conform and require the carrier to adjust the intrastate rates in such way as to remove the discrimination; for where the interstate and intrastate transactions of carriers are so related that the effective regulation of one involves control of the other, it is Congress, and not the State, that is entitled to prescribe the dominant rule.

"4. It is admissible for Congress to provide for the execution of this power

through a subordinate body such as the Interstate Commerce Commission, and this it has done by the Act to Regulate Commerce.

"5. Where in the exercise of its delegated authority the Commission not only finds that a disparity in the two classes of rates is resulting in unjust discrimination against interstate commerce but also determines what are reasonable rates for the interstate traffic, and then directs the removal of the discrimination, the carrier not only is entitled to put in force the interstate rates found reasonable but is free to remove the forbidden discrimination by bringing the intrastate rates to the same level." *Illinois Cent. R. Co. v. State Public Utilities Commission*, (1918) 245 U. S. 493, 38 S. Ct. 170; 62 U. S. (L. ed.) 425, *following* *Houston, etc., R. Co. v. U. S.*, (1914) 234 U. S. 342, 34 S. Ct. 833, 58 U. S. (L. ed.) 1341; *American Express Co. v. South Dakota*, (1917) 244 U. S. 617, 37 S. Ct. 656, 61 U. S. (L. ed.) 1352.

Where a proceeding to remove unjust discrimination presents solely the question whether the carrier has improperly exercised its authority to initiate rates, the Commission may legally order, in general terms, the removal of the discrimination shown, leaving upon the carrier the burden of determining also the points to and from which rates must be changed, in order to effect a removal of the discrimination. But where there is a conflict between the federal and the state authorities, the Commission's order cannot serve as a justification for disregarding a regulation or order issued under state authority, unless, and except so far as, it is definite as to the territory or points to which it applies. For the power of the Commission is dominant only to the extent that the exercise is found by it to be necessary to remove the existing discrimination against interstate traffic. *Illinois Cent. R. Co. v. State Public Utilities Commission*, (1918) 245 U. S. 493, 38 S. Ct. 170, 62 U. S. (L. ed.) 425 (*following* *American Express Co. v. South Dakota*, (1917) 244 U. S. 617, 37 S. Ct. 656, 61 U. S. (L. ed.) 1352), wherein the court said: "In construing federal statutes enacted under the power conferred by the commerce clause of the Constitution the rule is that it should never be held that Congress intends to supersede or suspend the exercise of the reserved powers of a State, even where that may be done, unless and except so far as, its purpose to do so is clearly manifested. This being true of an act of Congress, it is obvious that an order of a subordinate agency, such as the Commission, should not be given precedence over a state rate statute otherwise valid, unless, and except so far as, it conforms to a high standard of certainty."

2. Power of Courts (p. 462)

Federal.—A federal District Court having only the same jurisdiction under the Act of Oct. 22, 1913, of suits upon orders of the Interstate Commerce Commission that formerly was vested in the Commerce Court by the Act of June 18, 1910, may not exercise administrative authority where the Commission has failed or refused to exercise it, nor annul orders of the Commission not amounting to an affirmative exercise of its powers. *Manufacturers R. Co. v. U. S.*, (1918) 246 U. S. 457, 38 S. Ct. 383, 62 U. S. (L. ed.) 831.

State.—To the same effect as the original note, see *Reliance Elevator Co. v. Chicago, etc., R. Co.*, (1917) 139 Minn. 69, 165 N. W. 867.

3. Hearing (p. 463)

By section 12 of the Commerce Court Act (Act June 18, 1910, ch. 309, 36 Stat. 539, 552), section 15 of the Interstate Commerce Act was amended so as to provide that, whenever there should be filed with the commission any new schedule of rates, the commission should be authorized, either upon complaint or upon its own initiative, to enter upon a hearing concerning the propriety of such rate, and to make such order in reference thereto as would be proper in a proceeding initiated after the rate had become effective. It is clear that this provision was intended to so broaden the right of shippers therein declared as not to limit their remedy against any unreasonable rate to claims for reparation after the rate had gone into effect, but to permit shippers who would in the conduct of their business be directly affected by a proposed new rate to appear as complainants before the commission for the purpose of obtaining an order preventing such rate from being put into effect. *McLean Lumber Co. v. U. S.* (E. D. Tenn. 1916) 237 Fed. 460.

5. Review (p. 465)

Order attacked on constitutional grounds.—Where the Commission, after full hearing, has set aside a given rate on the ground that it is unreasonably high, it should require a clear case to justify a court, upon evidence newly adduced but not in a proper sense newly discovered, in annulling the action of the Commission upon the ground that the same rate is so unreasonably low as to deprive the carrier of its constitutional right of compensation. *Manufacturers R. Co. v. U. S.*, (1918) 246 U. S. 457, 38 S. Ct. 383, 62 U. S. (L. ed.) 831.

A party is not necessarily debarred from attacking on constitutional grounds an order of the Interstate Commerce Commission reducing railway rates, even

though they were not taken at the hearing before that body, but correct practice,—especially since the amendment of the Act of June 29, 1906 to the Act of Feb. 4, 1887, sections 14–16, by which the necessity of formal findings of fact, except in cases where damages or reparation are awarded, is dispensed with, and a greater effect than before is given to the orders of the Commission other than those requiring the payment of money,—requires that, so far as practicable, all the pertinent evidence shall be submitted in the first instance to the Commission, and that a suit to set aside or annul its order shall be resorted to only where the commission acts in disregard of the rights of the parties. *Manufacturers R. Co. v. U. S.*, (1918) 246 U. S. 457, 38 S. Ct. 383, 62 U. S. (L. ed.) 831.

Undue preference, etc.—Whether a preference or advantage or discrimination is undue, unreasonable, or unjust within the meaning of section 3, is one of those questions of fact that have been confided by Congress under sections 15 and 16, to the judgment and discretion of the Interstate Commerce Commission, and upon which the Commission's decisions, made the basis of administrative orders operating in futuro, are not to be disturbed by the courts, except upon a showing that they are unsupported by evidence, were made without a hearing, exceed constitutional limits, or for some other reason, amount to an abuse of power. *Manufacturers R. Co. v. U. S.*, (1918) 246 U. S. 457, 38 S. Ct. 383, 62 U. S. (L. ed.) 831.

Collateral attack.—A valid order fixing rates cannot be attacked collaterally. *Eastern Texas R. Co. v. Texas R. Commission*, (W. D. Tex. 1917) 242 Fed. 300.

Vol. IV, p. 468, sec. 15 [B].

Suspension of new rate.—Under the paragraph giving the Interstate Commerce Commission the power to suspend new rates pending a determination of their reasonableness, if it refuses to do so a District Court will not enjoin the collection of the rates pending such determination by the Commission. *M. C. Kiser Co. v. Central of Georgia R. Co.*, (S. D. Ga. 1916) 236 Fed. 573.

Burden of proof.—The last sentence of section 15, by the fair import of its terms, imposes upon the carrier the burden of proving the new rate to be just and reasonable, only where that question is involved in the hearing; it does not call for proof as to matters not in controversy. *Manufacturers R. Co. v. U. S.*, (1918) 246 U. S. 457, 38 S. Ct. 383, 62 U. S. (L. ed.) 831.

Vol. IV, p. 469, sec. 15 [C].

Constitutionality.—In *St. Louis Southwestern R. Co. v. U. S.*, (1917) 245 U. S.

136, 38 U. S. (L. ed.) 49, 62 U. S. (L. ed.) 199, *affirming* (W. D. Ky. 1916) 234 Fed. 668, the court said: "That Congress has power to authorize the Commission to enter an order for through routes and joint rates, like that here complained of, has been heretofore assumed. No reason is shown for questioning its existence now."

Order fixing maximum for joint rates.—The Interstate Commerce Commission, when fixing by its order a maximum for joint rates, may, in its discretion, permit the carriers to make their own agreement, subject to review by the commission, as to establishing joint rates within the maximum, and as to agreeing between themselves respecting divisions. *Manufacturers R. Co. v. U. S.*, (1918) 246 U. S. 457, 38 S. Ct. 383, 62 U. S. (L. ed.) 831.

Vol. IV, p. 472, sec. 15 [F]

Disclosing information of shipments.—A state statute provided as follows: "All express companies, railroad companies, or other transportation companies doing business in this state are required hereby to keep a separate book in which shall be entered immediately upon receipt thereof the name of the person to whom the liquor is shipped, the amount and kind received, and the date when received, the rate when delivered, by whom delivered, and to whom delivered, after which record shall be a blank space, in which the consignee shall be required to sign his name, or if he cannot write, shall make his mark in the presence of a witness, before such liquor is delivered to such consignee, and which said book shall be open for inspection to any officer or citizen of the state, county, or municipality any time during business hours of the company, and said book shall constitute prima facie evidence of the facts therein and will be admissible in any of the courts of this state. Any express company, railroad company, or other transportation company or any employee or agent of any express company, railway company, or other transportation company violating the provisions of this section shall be guilty of a misdemeanor." It was held that the state statute did not infringe the federal statute forbidding disclosure as to interstate shipments without the consent of the shipper which might be used to the shipper's disadvantage. *Seaboard Air Line Ry. v. North Carolina*, (1917) 245 U. S. 298, 38 S. Ct. 96, 62 U. S. (L. ed.) 299, (*affirming*) (1915) 169 N. C. 295, 84 S. E. 283, wherein the court said: "The provisions of § 15, Act to Regulate Commerce, here relied on were intended to apply to matters within the exclusive control of the Federal Government; and when by a subsequent act Congress rendered interstate shipments of intoxicating liquors subject to state legisla-

tion, those provisions necessarily ceased to be paramount in respect of them."

Vol. IV, p. 473, sec. 15 [H].

Payment of commission to shipper or forwarder.—A corporation engaged in forwarding or bringing goods for importers from the place of purchase in Europe to their destination in the United States, charging the importers for the transportation and such other services as it might perform, may not be allowed by a railway company a percentage upon the latter's published rates, and a salary as an inducement to ship by its line, without violating the prohibition of the Act of Feb. 4, 1887, section 6, as amended by the Act of June 29, 1906, section 2 (see *supra*, p. 1072); and such allowance cannot be justified under section 15 as being an allowance for a transportation service furnished by a shipper. *Lehigh Valley R. Co. v. U. S.*, (1917) 243 U. S. 444, 37 S. Ct. 434, 61 U. S. (L. ed.) 839, *affirming* (S. D. N. Y. 1915) 222 Fed. 685.

Vol. IV, p. 476, sec. 16 [B].

- II. Enforcement of orders.
 - 2. Orders enforceable.
- III. Nature of action to enforce order.
- IV. Statutes of limitation.
- VIII. Hearing.
 - 4. Evidence.
- X. Attorneys' fees and interest.
- XI. Appeals and supersedeas.

II. ENFORCEMENT OF ORDERS

2. Orders Enforceable (p. 478)

Reparation order.—In *Southern Pac. R. Co. v. Darnell-Taenzer Co.* (1918) 245 U. S. 531, 38 S. Ct. 186, 62 U. S. (L. ed.) 451, the issues and decision reached as stated by the court were as follows: "This is a suit brought by the defendants in error to recover reparation from the railroads for charging a rate on hardwood lumber, alleged to be excessive. The Interstate Commerce Commission had found the rate to be excessive and had made an order for reduction from 85 to 75 cents, which was obeyed, and also one for reparation to the extent of the excess, which was not obeyed. 13 I. C. C. 668. A demurrer to the declaration was sustained by the Circuit Court on the ground that it was not alleged that the plaintiffs had paid the excessive rates or that they were damaged thereby. 190 Fed. Rep. 659. The declaration was amended, but at the trial the judge directed a verdict for the defendant, presumably on the ground argued here, that it did not appear that the plaintiffs were damaged. The judgment was reversed by the Circuit Court of Appeals. 221 Fed. Rep. 890, 137 C. C. A. 460. At a new trial the jury

were instructed that if they found the rate charged unreasonable and that prescribed by the Interstate Commerce Commission reasonable, they should find for the plaintiffs in accordance with the Commission's award. The jury found for the plaintiffs and this judgment was affirmed by the Circuit Court of Appeals. 229 Fed. Rep. 1022, 143 C. C. A. 663. The only question before us is that at which we have hinted; whether the fact that the plaintiffs were able to pass on the damage that they sustained in the first instance by paying the unreasonable charge, and to collect that amount from the purchasers, prevents their recovering the overpayment from the carriers. The answer is not difficult. The general tendency of the law, in regard to damages at least, is not to go beyond the first step. As it does not attribute remote consequences to a defendant so it holds him liable if proximately the plaintiff has suffered a loss. The plaintiffs suffered losses to the amount of the verdict when they paid. Their claim accrued at once in the theory of the law and it does not inquire into later events. . . . An objection is taken to the jurisdiction of this court upon writ of error. An application is made for a certiorari in case the objection is held good, and as we should grant the latter writ in that event the question has no importance here except as a precedent. We are inclined to take the course followed *sub silentio* in *Mills v. Lehigh Valley R. R. Co.*, and to treat cases brought under § 16 of the Act to Regulate Commerce which authorized the joinder of all plaintiffs and all defendants as standing on a peculiar ground."

III. NATURE OF ACTION TO ENFORCE ORDER (p. 479)

An action on a reparation order should proceed in all respects like other civil actions for damages, except that on the trial the findings and order of the Interstate Commerce Commission are *prima facie* evidence of the facts therein stated. *Atchison, etc., R. Co. v. Spiller*, (C. C. A. 8th Cir. 1917) 246 Fed. 1, 158 C. C. A. 227.

IV. STATUTES OF LIMITATION (p. 479)

Jurisdictional requirement.—The requirement that all complaints for the recovery of damages shall be filed with the Interstate Commerce Commission "within two years from the time the cause of action accrues, and not after," is not a mere statute of limitations, but is jurisdictional, and prevents consideration by the commission of such a complaint when not filed in time. *U. S. v. Interstate Commerce Commission*, (1918) 246 U. S. 638, 38 S. Ct. 408, 62 U. S. (L. ed.) 914,

reversing (1914) 42 App. Cas. (D. C.) 514.

"Accrues."—The day when overcharges by a carrier are actually paid, not the day when the shipment was delivered, is the time when the shipper's cause of action to recover back the overcharges "accrues," within the meaning of the requirement that all complaints for the recovery of damages shall be filed with the Interstate Commerce Commission within two years from the time the cause of action accrues. *U. S. v. Interstate Commerce Commission*, (1918) 246 U. S. 638, 38 S. Ct. 408, 62 U. S. (L. ed.) 914, *reversing* (1914) 42 App. Cas. (D. C.) 514.

Claim of reparation.—A complaint based on a claim of reparation filed within two years is sufficient to meet the requirements of filing although no specific statements of the shipments on which reparation was claimed was filed with the commission until after the lapse of two years. *Missouri Pac. R. Co. v. C. E. Ferguson Sawmill Co.*, (C. C. A. 8th Cir. 1916) 235 Fed. 474, 149 C. C. A. 20.

VIII. HEARING

4. Evidence (p. 482)

In general.—To the same effect as the original note, see *New York, etc., R. Co. v. Ballou*, (C. C. A. 9th Cir. 1917) 242 Fed. 862, 155 C. C. A. 450.

Additional proof.—To the same effect as the original note, see *Missouri Pac. R. Co. v. C. E. Ferguson Sawmill Co.*, (C. C. A. 8th Cir. 1916) 235 Fed. 474, 149 C. C. A. 20.

X. ATTORNEYS' FEES AND INTEREST (p. 485)

Attorneys' fees.—To the same effect as the original note, see *Morgan's Louisiana, etc., Co. v. Isaac Joseph Iron Co.*, (C. C. A. 6th Cir. 1917) 243 Fed. 149, 156 C. C. A. 15.

XI. APPEALS AND SUPERSEDEAS (p. 486)

New trial.—In *Clark Bros. Coal Min. Co. v. Pennsylvania R. Co.*, (E. D. Pa. 1916) 238 Fed. 642, a new trial was granted on the ground that the award of damages by the Interstate Commerce Commission which was in evidence before the jury was made by the Commission on an erroneous basis.

Review of fact.—Findings of the Commission if not without support in the evidence will be accepted by a Circuit Court of Appeals. *Morgan's Louisiana, etc., Co. v. Isaac Joseph Iron Co.*, (C. C. A. 6th Cir. 1917) 243 Fed. 149, 156 C. C. A. 15.

Vol. IV, p. 488, sec. 16 [L].

Certified copies of schedules in evidence.—Insufficiency of defective certification of a carrier's applicable tariff schedules

on file with the Interstate Commerce Commission, which were admitted in evidence by the trial court, could not justify a state appellate court in arbitrarily disregarding such schedules when passing upon the question whether or not the carrier had limited its liability for the baggage of an interstate passenger to a specified sum unless a greater value was declared and excess charges paid. *New York Central, etc., R. Co. v. Beaham*, (1916) 242 U. S. 148, 37 S. Ct. 43, 61 U. S. (L. ed.) 210.

Vol. IV, p. 506, sec. 20 [K].

V. Effect on state laws.

VI. Shipments affected.

VII. Receipt or bill of lading.

VIII. Who is initial carrier.

IX. Liability of initial carrier.

1. In general.

3. Period of liability.

4. Nature of liability.

X. Liability of connecting carrier.

XII. Limitation of liability.

1. In general.

2. Exemption from negligence.

3. Agreed valuation.

4. Notice of claim.

5. Time for bringing suit.

XIII. Jurisdiction of courts.

XV. Parties.

XVI. Pleading.

XVIII. Damages.

V. EFFECT ON STATE LAWS (p. 511)

Construction of proviso of amendment.

—To the same effect as the original note see *Pennington v. Grand Trunk Western R. Co.*, (1917) 277 Ill. 39, 115 N. E. 170.

VI. SHIPMENTS AFFECTED (p. 513)

Destination in same state through foreign state.—"Where a bill of lading shows the routing to be outside of the state, though the points of origin and destination both be within the same state, under the decisions of the United States Supreme Court it is an interstate shipment. 'The transportation of these goods certainly went outside of Arkansas, and we are of opinion that in its aspect of commerce it was not confined within the state.' *Hanley v. Railroad Co.*, 187 U. S. 617, 23 Sup. Ct. 214, 47 U. S. (L. ed.) 333. In this same opinion Mr. Justice Holmes quotes with approval from the case of *Steamship Co. v. Railroad Co.*, (C. C.) 9 Sawy. 253, 18 Fed. 10, as follows: 'To bring the transportation within the control of the state, as part of its domestic commerce, the subject transported must be within the entire voyage under the exclusive jurisdiction of the state.' These cases are decisive of the question that this shipment was an interstate shipment. It is argued by counsel for appellee that the shipment could have

moved wholly within the state of Mississippi, between the point of origin and the point of destination. While this may be true, at the same time the contract of affreightment routed the shipment via Memphis, Tenn. It was not left optional with the initial carrier to route the shipment. The Carmack Amendment was intended to and governs all interstate shipments." *Illinois Cent. R. Co. v. Rogers*, (1917) 116 Miss. 431, 76 So. 686.

VII. RECEIPT OR BILL OF LADING (p. 514)

In general.—To the same effect as the original annotation, second paragraph, see *Davis v. Norfolk Southern R. Co.*, (1916) 172 N. C. 209, 90 S. E. 123.

The Carmack amendment requires the carrier to issue a bill of lading, the terms of which are fixed by the Interstate Commerce Commission, whereby such contracts are made uniform throughout the United States. The carrier has no authority to enter into any other contract. *Bryan v. Louisville, etc., R. Co.*, (1917) 174 N. C. 177, 93 S. E. 750.

While the statute expressly requires a common carrier to issue a receipt or bill of lading for goods accepted for transportation from one state into another, it is not necessary to the right of the shipper to recover for loss or damage to the shipment that it does so. *Chesapeake, etc., R. Co. v. Jordan*, (Ind. App. 1916) 114 N. E. 461; *Dionne v. American Express Co.*, (Vt. 1917) 101 Atl. 209.

Power of connecting carriers to ingraft conditions on shipper's contract with initial carriers.—The terms of the original bill of lading for an interstate shipment which governs the entire transportation, could not be altered by a second bill of lading issued by a connecting carrier, since the latter was already bound to transport the shipment at the rate and upon the terms named in the original bill of lading, and the acceptance by the shipper of the second bill was therefore without consideration and was void. *Missouri, etc., R. Co. v. Ward*, (1917) 244 U. S. 383, 37 S. Ct. 617, 61 U. S. (L. ed.) 1213, *affirming* (Tex. Civ. App. 1914) 169 S. W. 1035.

VIII. WHO IS INITIAL CARRIER (p. 516)

Illustration.—Plaintiff shipped a carload of freight from Mankato to Duluth over the Omaha railway which delivered it to plaintiff at the latter place. Plaintiff then delivered it to defendant for transportation from Duluth to Hartford, Conn., and defendant issued a through bill of lading therefor. It was damaged after defendant had delivered it to a connecting carrier. The Omaha Company did not undertake to cause the shipment to be carried beyond Duluth and did not know that it was to be carried beyond

that point. It was held that the defendant was the initial carrier within the purview of the Carmack amendment. *Victor Produce Co. v. Western Transit Co.*, (1916) 135 Minn. 121, 160 N. W. 248.

For facts showing railroad company to be an initial carrier see *Baltimore, etc., R. Co. v. Montgomery*, (1916) 19 Ga. App. 29, 90 S. E. 740.

IX. LIABILITY OF INITIAL CARRIER

1. In General (p. 517)

To the same effect as the original note see *Chicago, etc., R. Co. v. Collins Produce Co.*, (C. C. A. 7th Cir. 1916) 235 Fed. 857, 149 C. C. A. 169; *Van Epps v. Atlantic Coast Line R. Co.*, (1916) 105 S. C. 406, 89 S. E. 1035.

The initial carrier is required to issue a receipt or bill of lading, with the effect of making such contract the measure of liability between the parties. *Gulf, etc., R. Co. v. Texas Packing Co.*, (1917) 244 U. S. 31, 37 S. Ct. 487, 61 U. S. (L. ed.) 970.

Notice of failure of consignee to accept delivery.—Where goods cannot be delivered by a terminal carrier in accordance with the contract of transportation, the duty devolves on such carrier to notify the owner of the goods, whether he be consignor or consignee and if the duty is not performed the initial carrier is liable for damages resulting from the nonperformance of the duty. *Stoddard Lumber Co. v. Oregon-Washington R., etc., Co.*, (1917) 84 Ore. 399, 165 Pac. 363.

3. Period of Liability (p. 519)

To the same effect as the original note see *Henderson v. Atlantic Coast Line R. Co.*, (Ala. 1917) 76 So. 309.

Under the Carmack amendment the initial carrier is not liable for the negligence of the delivering carrier after its relationship as carrier has ceased, and its duty to the plaintiff and to the goods becomes that of warehouseman only. Or, in other words, if the transit is at an end, if the delivering carrier has ceased to have possession of the goods as carrier, and holds them in another capacity, as warehouseman, then the delivering carrier is responsible only for the care and diligence which the law attached to that relation, and the loss occurring while held in that relation does not reach back and involve the initial carrier or any connecting carrier. *Adams Seed Co. v. Chicago Great Western R. Co.*, (Ia. 1917) 165 N. W. 367, L. R. A. 1918B 622.

4. Nature of Liability (p. 519)

While the carrier is made liable to the shipper for loss, damage or injury caused

by it, and no contract may relieve it, the amendment does not attempt to change the common-law rule as to the effect of an act of God in excusing the carrier where loss results proximately therefrom. Where proof is given that goods are damaged in the hands of the carrier, the burden is upon him to show that the damage arose from some cause for which he was not liable. But where the carrier shows that the loss was occasioned by the act of God he has done all that is required. If the shipper then claims that the carrier's negligence also directly contributed to the negligence he must show that fact. *Barnet v. New York Cent., etc., R. Co.*, (1918) 222 N. Y. 195, 118 N. E. 625, *reversing* (1915) 167 App. Div. 738, 153 N. Y. S. 374.

X. LIABILITY OF CONNECTING CARRIER (p. 522)

Nature of liability.—To the same effect as the second original note see *Yesbik v. Central of Georgia R. Co.*, (1917) 19 Ga. App. 252, 91 S. E. 274; *Southern R. Co. v. Waxelbaum Produce Co.*, (1916) 19 Ga. App. 64, 90 S. E. 987; *Genarl of Georgia R. Co. v. Yesbik*, (1917) 146 Ga. 769, 92 S. E. 527; *Nashville, etc., Ry. v. Abramson-Boone Produce Co.*, (Ala. 1917) 74 So. 350; *Illinois Cent. R. Co. v. Rogers*, (1917) 116 Miss. 99, 76 So. 686; *Pennington v. Grand Trunk Western R. Co.*, (1917) 277 Ill. 39, 115 N. E. 170; *Erisman v. Chicago, etc., R. Co.*, (Ia. 1917) 163 N. W. 627.

What is known as the "Carmack Amendment" imposes liability for goods damaged or destroyed upon the initial carrier no matter where the loss occurs. Other carriers en route are not primarily liable unless the damage occurs on their line. *Cedar Rapids Fuel Co. v. Illinois Cent. R. Co.*, (1916) 178 Ia. 878, 160 N. W. 353.

A common-law action against a connecting carrier for loss or damage to freight, where it is expressly alleged that the injury or damage complained of was caused by the negligence of the defendant carrier, is not prohibited by the Carmack amendment. *Cincinnati, etc., R. Co. v. Quincey*, (1917) 19 Ga. App. 167, 91 S. E. 220.

The Carmack amendment makes a carrier who receives property for interstate transportation liable for loss or injury to such property beyond its own lines, but it does not make a carrier liable for the acts of preceding carriers which may have resulted in loss of, or injury to, such property. *Knapp v. Minneapolis, etc., R. Co.*, (1916) 34 N. D. 466, 159 N. W. 81.

XII. LIMITATION OF LIABILITY

1. In General (p. 524)

Cummins amendment.—By the Cummins amendment of March 4, 1915, a com-

mon carrier of an interstate shipment was made liable to the shipper for the full actual loss, damage, or injury to the property, notwithstanding any limitation of liability or limitation of the amount of recovery or representation or agreement as to value in the receipt or bill of lading, or in any contract, rule, regulation, or in any tariff filed with the Interstate Commerce Commission, whether or not the goods were hidden from view by wrapping, boxing, or other means unless, in case they were hidden from view, he required the shipper to state specifically in writing their value. *McCormick v. Southern Express Co.*, (W. Va. 1917) 93 S. E. 1048.

The Cummins amendment was not retroactive. *Bryan v. Louisville, etc., R. Co.*, (1917) 174 N. C. 177, 93 S. E. 750.

Act of God.—In *Continental Paper Bag Co. v. Maine Cent. R. Co.*, (1916) 115 Me. 449, 99 Atl. 259, the bill of lading provided that the carrier should not be liable for any loss or damage or delay caused by an act of God, it was held that where the arrival of the goods at the place of destination was delayed by the negligence of one or more connecting carriers and after such arrival they were injured by an unprecedented flood amounting to an act of God, the flood, and not the delay, was the proximate cause of the injury, and that the defendant, the initial carrier, was not liable.

2. Exemption from Negligence (p. 525)

An interstate live stock carrier cannot, by an agreement made in consideration of a reduced rate, and contained in a bill of lading issued pursuant to the Carmack amendment in conformity with the carrier's tariffs filed with the Interstate Commerce Commission, limit its liability from unusual delay and detention caused by its negligence to the amount actually expended by the shipper in the purchase of food and water for his stock while so detained. *Boston, etc., R. Co. v. Piper*, (1919) 246 U. S. 439, 39 S. Ct. 354, 62 U. S. (L. ed.) 820, *affirming* (1916) 90 Vt. 176, 97 Atl. 508.

Though a carrier may contract for the shipper to accompany a live stock shipment, it cannot thereby relieve itself, or any connecting carrier, from its or their negligent failure to perform such duty, and, to the extent that any provision of a special contract would attempt to relieve the carrier from such a liability, it would be invalid and void. *Chicago, etc., R. Co. v. Priddy*, (Ind. App. 1917) 115 N. E. 266.

In *Adams v. Chicago, etc., R. Co.*, (Ia. 1917) 161 N. W. 295, the court said: "Something is said in argument to the effect that the company is released from liability because of the stipulation on the back of the contract providing that: 'The

undersigned owners in charge of the stock, in consideration of free passage, agree that the company shall not be liable for injury or damage of any kind suffered by us while in charge of the live stock.' Why this provision was inserted, in view of the repeated holdings of the courts that a common carrier cannot relieve itself by contract from liability for its own negligence, we cannot discover. It seems to be urged that under the Carmack Act those engaged in interstate commerce may make rules with the shippers limiting liability. Of course they may make certain rules limiting liability, but not such as to relieve them from the consequences of their negligence. They may limit the amount of damage that may be recovered for loss or negligent injury to freight; they may limit the time in which actions may be brought under contracts, but the authorities do not hold that they can contract against any liability for negligence. They cannot contract against liability for the consequences that follow a violation of their common law duty in transporting passengers. We hold, therefore, that this provision on the back of the contract is void and against public policy."

3. Agreed Valuation (p. 520)

In general.—To the same effect as the original note, see *Richter v. American Express Co.*, (Ia. 1917) 164 N. W. 228, L. R. A. 1918A 749.

The validity of a contract limiting the carrier's liability to an agreed valuation does not depend upon the relation of that value to the actual value. It rests upon the proposition that, by freely and deliberately electing to contract for carriage at a rate of compensation based upon an agreed value, the shipper is estopped to claim a higher value in case the shipment is lost or damaged. *Moore v. Duncan*, (C. C. A. 6th Cir. 1916) 237 Fed. 780, 150 C. C. A. 534.

The agreed valuation of an express package determines the amount of damages recoverable from an express company who accepted it and whose agent stole it. The fact that it was undervalued is immaterial. *D'Utassy v. Barrett*, (1916) 219 N. Y. 420, 114 N. E. 786, *affirming* (1916) 171 App. Div. 772, 155 N. Y. 916.

Mistake in rate.—When the shipper makes an express representation of value for the purpose of enabling the carrier to fix the rate, and a rate is fixed by the carrier, which by mistake is based on the theory that a much lower valuation was fixed than that in fact contained in the written statement of value signed by the shipper, the rights of the shipper cannot be affected within the limits established by his declaration of value by the rate which the carrier exacts. *Aradalous*

v. New York, etc., R. Co., (1916) 225 Mass. 235, 114 N. E. 297.

4. Notice of Claim (p. 529)

In general.—To the same effect as the first note under this heading see *Atchison, etc., R. Co. v. Miller*, (Colo. 1917) 163 Pac. 836.

A stipulation in a through bill of lading for an interstate shipment of peaches that the carrier issuing the bill of lading shall not be held liable for damages unless a claim for damages is reported by the consignee in writing to the terminal carrier within thirty-six hours after the consignee has been notified of the arrival of the freight at the place of delivery is valid and not unreasonable. Written notice within the time stipulated of an intention to make a claim for damages, without specifying the amount of the damages claimed is a sufficient compliance with the stipulation. The failure to comply with the requirement of the stipulation was not excused, where the terminal carrier had a freight agent at the place of delivery in charge of the docks upon which the shipment was delivered, by virtue of the giving of verbal notice of the bad condition of the shipment to the terminal carrier's dock master, or because of the knowledge of such condition by longshoremen working on the docks. *St. Louis, etc., R. Co. v. Starbird*, (1917) 243 U. S. 592, 37 S. Ct. 462, 61 U. S. (L. ed.) 917, *reversing* (1915) 118 Ark. 485, 177 S. W. 912.

In *Aydlett v. Norfolk-Southern R. Co.*, (1916) 172 N. C. 47, 89 S. E. 1000, the court said: "The defense in this case is based, not on a statute, but on the contract of shipment that declares that: 'Claims for loss, damage, or delay must be made in writing to the carrier at the point of delivery or at the point of origin within four months after delivery of the property, or, in case of failure to make delivery, then within four months after a reasonable time for delivery has elapsed. Unless claims are so made the carrier shall not be liable.' The initial carrier and the last carrier are thus made the agents of all the other carriers for the purpose of filing claims for damage. In our judgment, that provision was not intended, nor can it have the effect to preclude the claimant from filing his claim with and from suing the carrier that actually caused the injury."

Waiver of stipulation.—A stipulation limiting the time for presenting claims is valid if reasonable and cannot be waived. *Metz Co. v. Boston, etc., R. Co.*, (1917) 227 Mass. 307, 116 N. E. 475.

5. Time for Bringing Suit (p. 532)

A stipulation, in a contract for an interstate shipment of live stock, providing that no suit or action shall be sustainable

in any court of law or equity "unless such suit or action be commenced within six months next after the cause of action shall occur," is valid, binding and enforceable. *Chicago, etc., R. Co. v. Paden*, (Okla. 1917) 162 Pac. 727.

XIII. JURISDICTION OF COURTS (p. 534)

Removal of cause from state to federal court.—A state court has jurisdiction of an action under the Carmack amendment but the action may be removed to a federal court because of its federal nature (see vol. 5, p. 16, Judicial Code, § 28) where the matter in controversy exceeds the sum or value of \$3,000. *Southern Pac. Co. v. Stewart*, (1917) 245 U. S. 359, 38 S. Ct. 130, 62 U. S. (L. ed.) 345.

XV. PARTIES (p. 535)

"Lawful holder."—The words "lawful holder," as used in the provision of the Carmack amendment, that any common carrier receiving property for transportation from a point in one state to a point in another state shall issue a receipt or bill of lading therefor and shall be liable to the lawful holder thereof for any loss, damage, or injury to such property, cannot be said to mean only the owner of the shipment or someone shown to be duly authorized to act for him in such a way as to render any judgment recovered in the action against the carrier *res judicata* in any other action, although by section 8 of the earlier Act a carrier is made liable "to the person or persons injured" in consequence of any violation of the Act, since to adopt this view would permit the general purpose of the latter section to control the purpose of the amendment, which is special and definitely expresses the lawful holder of the bill of lading to be the person to whom the carrier shall be liable. *Pennsylvania R. Co. v. Olivit*, (1917) 243 U. S. 574, 37 S. Ct. 468, 61 U. S. (L. ed.) 908, *affirming* (1916) 88 N. J. L. 376, 96 Atl. 589.

XVI. PLEADING (p. 535)

Issuance of receipt or bill of lading.—The Carmack Amendment requires the carrier receiving property for transportation between points in different states to issue a receipt or bill of lading therefor, and makes the carrier liable to the lawful holder thereof for any loss, damage, or injury to such property. While there is no specific allegation in the complaint that such bill of lading or receipt was issued, as the law makes it the duty of the carrier to issue the same, the presumption is that such duty was complied with. *Southern Pac. Co. v. Stewart*, (1917) 245 U. S. 359, 38 S. Ct. 130, 62 U. S. (L. ed.) 345.

XVIII. DAMAGES (p. 535)

Punitive damages are not recoverable. *Harman v. Southern R. Co.*, (1916) 106

S. C. 209, 90 S. E. 1023, *following* *De Loach v. Southern R. Co.*, (1916) 106 S. E. 155, 90 S. E. 701.

Freight paid.—The recovery, as a part of the damages caused by a delay in transporting an interstate shipment of perishable freight, of the freight paid upon delivery at destination, is properly allowed, notwithstanding the prohibitions of the Interstate Commerce Act against deviations from the filed tariffs and schedules, and against rebates and undue preferences and discriminations,—especially where the bills of lading require damages to be computed upon the basis of the value of the property at the place and time of shipment. *Pennsylvania R. Co. v. Olivit*, (1917) 243 U. S. 574, 37 S. Ct. 468, 61 U. S. (L. ed.) 908, *affirming* (1916) 88 N. J. L. 376, 96 Atl. 589.

Vol. IV, p. 536, sec. 20 [L].

Judgment as evidence against connecting carrier.—To the same effect as the original note see *St. Joseph, etc., R. Co. v. Des Moines Union R. Co.*, (Ia. 1917) 162 N. W. 812.

Vol. IV, p. 539, sec. 22

II. RESERVATION OF EXISTING REMEDIES (p. 541)

Failure to furnish cars.—A state court has jurisdiction without previous action by the Interstate Commerce Commission of a suit by a coal mining company against an interstate carrier to recover the damages arising in interstate commerce out of the latter's failure to furnish such company with the number of coal cars to which it claims to be entitled under the carrier's own rule for car distribution, since, the rule itself not being attacked, there was no administrative question involved. *Pennsylvania R. Co. v. Stineman Coal Min. Co.*, (1916) 242 U. S. 298, 37 S. Ct. 118, 61 U. S. (L. ed.) 316, *reversing* (1913) 241 Pa. St. 509, 88 Atl. 761.

The carrier's defense at the trial of a suit brought by a shipper to recover the damages arising in interstate commerce out of the carrier's failure to furnish such shipper with the cars to which it claimed to be entitled under the carrier's own rule for car distribution, that the rule invoked by the shipper was discriminatory, and therefore not an appropriate test of the shipper's right or the carrier's duty, did not oust the state court of jurisdiction, where the administrative question thus presented was not then an open one, such rule having theretofore been found by the Interstate Commerce Commission, upon complaint of other shippers, to be unjustly discriminatory. *Pennsylvania R. Co. v. Stineman Coal Min. Co.* (1916) 242 U. S. 298, 37 S. Ct. 118.

61 U. S. (L. ed.) 316, *reversing* (1913) 241 Pa. St. 509, 88 Atl. 761.

No recovery may be had in a suit brought in a state court by a shipper to recover damages arising in interstate commerce out of the carrier's failure to furnish a shipper with the cars to which it claimed to be entitled under the carrier's own rule for car distribution, where, before the trial, though after the period covered by the suit, the Interstate Commerce Commission, upon complaint of other shippers and after a full hearing, had found that such rule was unjustly discriminatory, and had directed the carrier to give no further effect to it, and, recognizing that shippers who had been injured through its operation in the past were entitled to reparation, had proceeded to award reparation to such shippers as appeared and adequately proved their injury and the amount of damages sustained, the Commission's report making it plain that the finding was not based upon any temporary condition, but upon what inhered in the rule, and therefore was true from the time of its adoption. *Pennsylvania R. Co. v. Stineman Coal Co.*, (1916) 242 U. S. 298, 37 S. Ct. 118, 61 U. S. (L. ed.) 316, *reversing* (1913) 241 Pa. St. 509, 88 Atl. 761.

Recovery of overcharges.—If the validity of the published rates is not questioned the state court has jurisdiction of an action to recover the amount of an alleged overcharge. *Reliance Elev. Co. v. Chicago, etc., R. Co.*, (Minn. 1917) 165 N. W. 867.

Vol. IV, p. 549, sec. 1 [A].

IX. CONCESSION OR DISCRIMINATION (p. 555)

In general.—Any pecuniary inducement held out to a shipper to procure his business over a particular railroad is or may be a rebate or concession within the prohibition of the Elkins Act. *Northern Cent. R. Co. v. U. S.*, (C. C. A. 2d Cir. 1917) 241 Fed. 25, 154 C. C. A. 25.

X. VENUE (p. 557)

To the same effect as the original note see *Northern Cent. R. Co. v. U. S.*, (C. C. A. 2d Cir. 1917) 241 Fed. 25, 154 C. C. A. 25.

Vol. IV, p. 567, sec. 1.

Scope of immunity.—This section does not grant immunity from a prosecution which has nothing to do with the Anti-trust Act and is concerned only with certain frauds in connection with the weighing of dutiable goods whereby the government was deprived of duties which it should have received. *Heike v. U. S.*, (1913) 33 S. Ct. 226, 57 U. S. (L. ed.) 450, Ann. Cas. 1914C 128, 227 U. S. 131, *affirming* (C. C. A. 2d Cir. 1911) 192 Fed. 83, 112 C. C. A. 615.

Vol. IV, p. 569. [Act of June 30, 1906]

A person verifying a pleading is not covered by this section. *Simon v. American Tobacco Co.*, (S. D. N. Y. 1911) 192 Fed. 662.

INTOXICATING LIQUORS

Vol. IV, p. 593. [Act of March 1, 1915]

- I. In general.
- IV. Importation for personal use.
- V. State laws.
- 2. Validity, scope and effect of state laws.
- VI. Duties and liabilities of commerce carriers.

I. IN GENERAL (p. 593)

Penal Code, section 238, how affected.—The Webb-Kenyon Act does not repeal, or suspend the provisions of Penal Code, section 238 (see vol. 7, p. 863) which denounces under penalty of a fine or imprisonment, the offense of the delivery by an agent or employee of an express company, or other common carrier, to any fictitious person or to any person under a fictitious name, of any intoxicating

liquor shipped in interstate commerce. *Witte v. Shelton*, (C. C. A. 8th Cir. 1917) 240 Fed. 265, 153 C. C. A. 191.

"Law of such state" includes a city ordinance. *Kansas City v. Jordan*, (1913) 99 Kan. 814, 163 Pac. 188 Ann. Cas. 1918B 273.

IV. IMPORTATION FOR PERSONAL USE (p. 598)

A state law which prohibits the delivery of liquors for the personal use of the consignee, or limits the amount that may be delivered to a consignee for such use is valid under the Webb-Kenyon Act. *James Clark Distilling Co. v. Western Maryland R. Co.*, (1916) 242 U. S. 311, 37 S. Ct. 180, 61 U. S. (L. ed.) 326, Ann. Cas. 1917B 845, L. R. A. 1917B 1218, *distinguishing* *Adams Express Co. v. Kentucky*, (1914) 238 U. S. 190, 35 S. Ct. 824, 59 U. S. (L. ed.) 1267, Ann. Cas. 1915D 1167, L. R. A. 1916C 273, which *reversed*

(1914) 160 Ky. 66, 169 S. W. 603; *Theo. Hamm Brewing Co. v. Chicago, etc.*, R. Co., (C. C. A. 7th Cir. 1917) 243 Fed. 143, 156 C. C. A. 9, *reversing* (D. C. Minn. 1913) 215 Fed. 672; *State v. Southern Express Co.*, (1917) 173 N. C. 753, 91 S. E. 706; *Brennen v. Southern Express Co.*, (1916) 106 S. C. 102, 90 S. E. 402.

V. STATE LAWS

2. *Validity, Scope and Effect of State Laws* (p. 600)

Books of record.—A state law providing that railroad companies shall keep a separate book in which shall be entered the name of every person to whom intoxicating liquor is shipped, together with amount, kind, date of receipt, etc., to be followed by the consignee's signature acknowledging delivery is not in conflict with this Act. *Seaboard Air Line R. Co. v. North Carolina*, (1917) 245 U. S. 298, 38 S. Ct. 96, 62 U. S. (L. ed.) 299, *affirming* (1915) 169 N. C. 295, 84 S. E. 283.

Marking packages containing liquors.—A state statute requiring packages containing liquors to be conspicuously marked with the words "This Package Contains Intoxicating Liquors" is not authorized by the Webb-Kenyon Act. *Chicago, etc., R. Co. v. Giles*, (D. C. Colo. 1916) 235 Fed. 804. See *Contra State v. Owen*, (Wash. 1917) 166 Pac. 793.

Permit attached to liquor packages.—A state statute requiring a permit to be

attached to packages of liquor shipped into the state is warranted by the Webb-Kenyon Act. *State v. Warburton*, (Wash. 1917) 166 Pac. 615; *State v. Great Northern R. Co.*, (1917) 97 Wash. 137, 165 Pac. 1073.

Shipments of liquor through a state from a place without the state cannot be seized under a state statute by virtue of the Webb-Kenyon Act. *State v. Great Northern R. Co.* (1917) 97 Wash. 137, 167 Pac. 103.

VI. DUTIES AND LIABILITIES OF COMMERCE CARRIERS

If a consignment of liquors is intended by any person interested therein to be the subject, instrumentality, or other means of violating a valid state law governing the liquors described in the Webb-Kenyon Act, it cannot be and does not become an article in interstate commerce, and is not protected by the rules of law applicable to lawful interstate commerce, and a carrier or person concerned in its interstate transportation, its acceptance or delivery, cannot invoke the rule of law applicable to lawful interstate commerce to protect or to justify such carrier or person in respect of the carrier's or person's connection or service in transporting or delivering the shipment thus forbidden lawful entry into interstate commerce. *State v. Southern Express Co.*, (Ala. 1917) 75 So. 343.

JUDGMENTS

Vol. IV, p. 606, R. S. 967.

Effect of state statutes.—To the same effect as the original note, see U. S. v. Minor, (W. D. N. C. 1917) 243 Fed. 953.

JUDICIAL OFFICERS

Vol. IV, p. 651, sec. 824.

To constitute a "final hearing" in admiralty the cause must be presented to the court in some such manner as to invoke its judgment on the merits of the controversy either upon the facts or upon the law, whereby a determination is reached which disposes of the controversy. And where, after a witness was sworn, or just about to be sworn, but had given no testimony whatever, the proctor for libellant moved for a dismissal without prejudice, which was not resisted by respondent, and an order was entered dismissing the cause on libellant's motion, without

prejudice, but with costs to respondent, the taxation of \$20 to respondent's proctor as a docket fee was not allowable. *Albion Lumber Co. v. Inter-Ocean Transp. Co.*, (N. C. Cal. 1917) 240 Fed. 1019, *citing*, with other cases, *The Mount Eden*, (N. D. Cal. 1898) 87 Fed. 483.

Vol. IV, p. 657, sec. 828.

X. COPIES (p. 671)

In naturalization proceedings.—The clerk of a District Court is not entitled to fees for making, on the direction of the Bureau of Immigration and Naturaliza-

tion, triplicate copies of original declarations of intention for naturalization, and attaching the seal of the court to the same. The charging of such fees would be incompatible with sections 12, 13 and 21 of the Naturalization Act of June 29, 1906, 34 Stat. L. 596, 1909 Supp. p. 364; *Cross v. U. S.*, (1916) 242 U. S. 4, 37 S. Ct. 5, 61 U. S. (L. ed.) 114.

Vol. IV, p. 678, sec. 829.

III. SERVICE OF WARRANTS, ETC. (p. 682)

Summons and declaration.—In *Burroughs Bros. Mfg. Co. v. Dulaney*, (D. C. Md. 1916) 238 Fed. 255, where the marshal served on each of four defendants a writ of summons with a copy of the declaration attached, and charged in accordance with what appeared to have been the practice of the office for many years, \$4 for the service on each person, on the theory that the two papers, to wit, the writ of summons and a copy of the declaration, constituted each a service of a separate writ, the court held that there could not be such a constructive separation of what was really one service, and that "a reasonable construction of the statute limits the marshal to one fee of \$2 for one service at one time in one cause on one person, no matter how many papers, copies, orders to show cause, etc., may be served by him on that one individual at the one time, and in the one cause."

XII. SETTLEMENT OF CLAIM IN ADMIRALTY (p. 687)

Right to fee in general.—Where, on a libel against a yacht, the craft was taken into custody by the marshal pursuant to writ, but was afterwards released upon the giving of a bond by the claimant to the marshal, the case was tried, and a final decree was entered for the libellant with costs, he was entitled to have taxed as part of his costs the poundage required to be paid to the marshal in case of settlement without a sale. *The Eros*, (E. D. N. Y. 1916) 245 Fed. 814.

Vol. IV, p. 756, sec. 771.

IV. CIVIL SUITS AND PROCEEDINGS

1. In General (p. 759)

"To prosecute all civil actions."—Where, on a bill filed by the United States to recover money on account of frauds against the internal revenue laws, a receiver was appointed pursuant to the prayer of the bill, and the receiver filed a bill to recover moneys of a corporation defendant which had been fraudulently misappropriated and concealed, which was a purely ancillary or dependent proceeding, throughout which the United States was treated as the sole beneficiary, as in fact it turned out to be, and the district

attorney and his assistant who instituted the main suit and were appointed counsel for the receiver by the court, and though not directed by the Attorney-General to appear in the receiver's suit, did so appear and throughout the litigation were recognized by the court, the receiver and the Department of Justice as representing the United States, it was deemed contrary to public policy to allow said attorney and his assistant, at least without the consent of the Attorney-General, compensation for their services to the receiver, though paid by the defendants, under a compromise, and not out of the fund recovered. It was held that the receiver's ancillary suit was within R. S. sec. 771, which section is not limited to cases in which the United States is a party of record. "We think," said the court, "public policy as declared by the statutes and the decisions of the courts of the United States, opposes generally to the receipt by United States attorneys of private compensation for the performance of statutory duties," especially as criminal prosecutions in which said United States officers were actively connected were pending against some of the defendants. This conclusion was strengthened by consideration of the provision for salaries to United States attorneys in full for official services in the Act of May 28, 1896, ch. 252, §§ 6, 7, 29 Stat. L. 179, 180 [title JUDICIAL OFFICERS, vol. IV, pp. 718, 722]; *McPherson v. U. S.*, (C. C. A. 6th Cir. 1917) 245 Fed. 35, 157 C. C. A. 331.

2. Suits by United States (p. 759)

Revenue suits.—The United States attorney represents the United States in revenue fraud cases. *McPherson v. U. S.*, (C. C. A. 6th Cir. 1917) 245 Fed. 35, 157 C. C. A. 331.

Vol. IV, p. 761, sec. 838.

It is the duty of United States attorneys to represent the United States in suits by the latter to recover money on account of frauds upon the internal revenue laws. *McPherson v. U. S.*, (C. C. A. 6th Cir. 1917) 245 Fed. 35, 157 C. C. A. 331.

Vol. IV, p. 774. [Act of June 30, 1906]

Appointment.—"We do not think the act of June 30, 1906, in conferring the power of appointment upon the Attorney General, should be construed to mean that the Attorney General must, in all cases, sign the appointment himself, but that the power of appointment is conferred upon the Attorney General as other powers are conferred, to be exercised by him personally or through his lawful assistants when only authorized for such purpose." *May v. U. S.*, (C. C. A. 8th

Cir. 1916) 236 Fed. 495, 149 C. C. A. 547.

Conviction of a bankrupt for fraudulent concealment of property was affirmed as against alleged impropriety or illegality in the fact that the attorney who represented the petitioning creditors, the receiver appointed by the court, and the trustee in bankruptcy aided, as a duly appointed special assistant United States District Attorney in the prosecu-

tion of the case, taking active part in the trial, although not appearing before the grand jury, where there was no claim that such assistant was paid otherwise than by the government, nor was his conduct upon the trial criticised. And the fact that such counsel would have been disqualified from so acting, under the state law, was immaterial. *Terry v. U. S.*, (C. C. A. 1916) 235 Fed. 701, 149 C. C. A. 121.

JUDICIARY

Vol. IV, p. 831, Jud. Code, sec. 20.

Judge "concerned in interest."—In *In re Honolulu Consol. Oil Co.*, (C. C. A. 9th Cir. 1917) 243 Fed. 348, 156 C. C. A. 128, the Circuit Court of Appeals held that the judge was "concerned in interest" in the result of the suits, by reason of a stockholder's liability he might incur, and granted a mandamus directing him to enter an order that an authenticated copy of his disqualification be certified to the senior judge of the circuit.

Vol. IV, p. 842, Jud. Code, sec. 24, par. first.

II. Suits of civil nature at common law or in equity.

1. In general.
4. At law and in equity.
 - c. In equity.
6. Administration or probate.

VII. Amount in controversy.

3. Cases requiring jurisdictional amount.
 - e. Federal question involved.
5. Ascertainment of value, etc.
8. Pleading amount by plaintiff.
 - a. Necessity and sufficiency.

VIII. Suits arising under constitution, laws, or treaties.

1. In general.
 - f. Citizenship immaterial.
 - i. Suit against state.
2. Pleading federal question.
 - a. Plaintiff required to show.
 - g. Anticipation of defense.
4. Allegations held sufficient.
 - a. Unconstitutional state statute.
 - d. Construction of federal statute.

IX. Suits arising under constitution.

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 - b. Impairment of contract obligation.
7. Denial of equal protection of law.

X. Suits under laws of United States.

1. General rules:
 - e. Test formulated by Judge Amidon.
8. Suit against officers of national banks.
31. Federal Employers' Liability Act.

XII. Diverse citizenship.

2. Citizen of a state.
4. Citizenship of corporation.
12. Arrangement of parties as to adverse interests.
13. Parties to bills in equity.
16. Unnecessary parties.
17. Representative parties.
18. Interveners and substituted parties.
20. Pleading citizenship.

XVI. Suits by assignees.

1. Purpose of Act.
4. "Chose in action."
7. Applicability.
 - b. Application with regard to persons.
8. Matters relating to jurisdiction.

XVII. Service of process.

XVIII. Ancillary proceedings.

2. Jurisdiction in general.
3. Particular proceedings and matters.
 - e. Enjoining pending action.

II. SUITS OF CIVIL NATURE AT COMMON LAW OR IN EQUITY

1. In General (p. 849)

The clause "concurrent with the courts of the several states," which appeared in this section in the Judiciary Act of 1887-1888, having been omitted here, if there is any question that the federal courts have jurisdiction under the general equity powers conferred by the Constitution and the Acts of Congress, such question cannot arise because of any limitation upon their powers by that clause. *Welch v. Union Casualty Ins. Co.*, (E. D. Pa. 1917) 238 Fed. 968.

4. *At Law and in Equity*

c. *In Equity* (p. 853)

The general power of federal courts when sitting as courts of equity can be exerted only in cases otherwise within the jurisdiction of those courts as defined by Congress. *Genesee Valley Trust Co. v. Kansas City, etc., R. Co.*, (D. C. Kan. 1917) 240 Fed. 524.

State legislation.—Without the assent of Congress the jurisdiction of the federal District Court in equity, under Judicial Code, § 24, cannot be impaired or diminished by the statutes of the several states regulating the practice of their own courts. *Welch v. Union Casualty Ins. Co.*, (E. D. Pa. 1917) 238 Fed. 968.

6. *Administration or Probate* (p. 856)

In general.—"The courts of the United States, sitting in equity, have no general jurisdiction in matters of probate and the administration of the estates of decedents." *Smith v. Jennings*, (C. C. A. 5th Cir. 1915) 238 Fed. 48, 151 C. C. A. 124.

Establishment of claim—Heirship, etc.—A federal court has jurisdiction to determine the question whether or not a party is entitled to a share in the estate of a decedent in process of administration in a state Surrogate's Court, and to determine the limitation or extent of such share. *Stotesbury v. Huber*, (E. D. N. Y. 1916) 237 Fed. 413, citing *Ingersoll v. Coram*, (1908) 211 U. S. 335, 29 S. Ct. 92, 53 U. S. (L. ed.) 208.

A federal court has jurisdiction of a bill in equity by citizens of a state to establish their claim as heirs and next of kin to the entire estate of a decedent, brought against citizens of another state making the same claim on their own behalf, permanent administrators also citizens of the latter state being joined as defendants. *Jennings v. Smith*, (S. D. Ga. 1917) 242 Fed. 561.

Appointment of receiver.—In *Smith v. Jennings*, (C. C. A. 5th Cir. 1915) 238 Fed. 48, 151 C. C. A. 124, it was held that the District Court erred in appointing receivers of the estate of a decedent, and in enjoining and directing the temporary administrators to surrender the assets of the estate in their hands to the receivers, where it was contended, in support of the court below, that the appointment of the temporary administrators was a nullity because of fraud in the representations made as to the qualifications of the applicants and the amount of personal property of the estate.

Setting aside will.—A suit which is, in an essential feature, a suit to annul a will, where such proceeding is by the laws of the state merely supplemental to the proceedings for probate and cognizable only by the Probate Court, is not within the jurisdiction of a federal court.

35 [2d ed.]

Sutton v. English, (1918) 246 U. S. 199, 38 S. Ct. 254, 62 U. S. (L. ed.) 664.

VII. AMOUNT IN CONTROVERSY

3. *Cases Requiring Jurisdictional Amount*

a. *Federal Question Involved* (p. 864)

In general.—There is no jurisdiction on the ground of a federal question involved unless the amount in controversy exceeds \$3,000. *Supreme Council, etc., v. Hobart*, (C. C. A. 1st Cir. 1917) 244 Fed. 385, 157 C. C. A. 11.

5. *Ascertainment of Value, etc.* (p. 865)

Injunction.—In a suit by an employer against striking employees and their labor union to enjoin them from destroying or injuring plaintiff's property, where the alleged threatened damage far exceeded the jurisdictional amount, it was not necessary to give the court jurisdiction that \$3,000 worth of property should have been destroyed. *Tri-City Cent. Trades Council v. American Steel Foundries*, (C. C. A. 7th Cir. 1917) 238 Fed. 728, 151 C. C. A. 578.

The court had jurisdiction of a suit to enjoin a municipality from taking part of the plaintiff railroad company's right of way and depot grounds for street purposes, where it was possible that the amount awarded for the taking would exceed \$3,000. *Chicago, etc., R. Co. v. Lost Nation*, (S. D. Ia. 1916) 237 Fed. 709.

Money and injunction.—Where the plaintiff in a suit for an injunction against the further use of a formula for a beverage and the use of a name thereof and for an accounting for profits already earned, the Circuit Court of Appeals, affirming a decree in his favor, said: "The record sufficiently shows that the plaintiff, in good faith, believed he was entitled to recover from the defendants money and property rights worth far more than \$3,000. Under such circumstances, on the question of jurisdiction it matters not that the plaintiff may actually recover less than \$3,000, or nothing at all." *Garrett v. Mallard*, (C. C. A. 4th Cir. 1916) 238 Fed. 335, 151 C. C. A. 351.

8. *Pleading Amount by Plaintiff*

a. *Necessity and Sufficiency* (p. 877)

Injunction and damages to land.—In *Bronson v. Emmet, etc., Counties*, (N. D. Ia. 1916) 237 Fed. 212, a suit for damages and injunction for unlawful flowage of land by drainage ditches, where the court granted a motion to dismiss on other grounds, but with leave to amend, the court said: "The plaintiff alleges an injury, or damage, to 40 acres of land in Kossuth county, this state, that may be overflowed by backwater from the Des Moines river, if the drainage ditch is completed. It is possible that 40 acres of

land near that river might be damaged in excess of \$3,000 by backwater from the river or overflowed by it; but unless the damage was in excess of that amount the court, of course, would be without jurisdiction to determine this suit. There is no evidence, however, of the value of this land, or the extent of such damage, if any should occur, before the court except the allegations of the bill; but, if, upon the final hearing, the damage to the land was not shown to be in excess of that amount, the suit would have to be dismissed for want of jurisdiction. . . . If an amendment is filed the amendment must show with reasonable certainty that the amount in controversy is within the jurisdiction of this court."

VIII. SUITS ARISING UNDER CONSTITUTION, LAWS, OR TREATIES

1. In General

f. Citizenship Immaterial (p. 885)

If the cause of action arises under a federal statute the federal court has jurisdiction, though the parties are citizens of the same state and federal district. *Chesbrough v. Woodworth*, (1917) 244 U. S. 72, 37 S. Ct. 579, 61 U. S. (L. ed.) 1000.

i. Suit Against State (p. 886)

Suit against state officers.—In *Greene v. Louisville, etc., R. Co.*, (1917) 244 U. S. 499, 37 S. Ct. 673, 61 U. S. (L. ed.) 1280, Ann. Cas. 1917E 88, the court affirmed a decree, as within the jurisdiction of the District Court, enjoining state officers from taking action looking to the enforcement of certain state and local so-called franchise taxes assessed against public service corporations under state authority upon the ground of a discrimination in valuation of the intangible property upon which the taxes were based, arising out of systematic undervaluation of other taxable property.

In *Johnson v. Lankford*, (1918) 245 U. S. 541, 38 S. Ct. 203, 62 U. S. (L. ed.) 460, the action was against a state bank commissioner and the surety on his bond to recover for alleged failure of the commissioner to perform his duty in consequence of which the plaintiff's deposit in a state bank was squandered, and also for arbitrarily and capriciously refusing, in violation of law and his bond, to pay plaintiff's claim as a valid claim against the guaranty fund of the state, which was available under the law of the state for payment of claims against the bank. It was held that the action was not one against the state in violation of the 11th Amendment, and that the federal District Court had jurisdiction on the ground of diverse citizenship.

The same conclusion was reached, namely, that the action was not against the state, where the plaintiff in an action

against the same bank examiner and the surety on his bond was a stockholder in the bank as well as a depositor and sought to have his stockholder's liability of \$2,000 offset against any sums that might be owing to him by reason of the delinquencies of the said bank examiner. *Martin v. Lankford*, (1918) 245 U. S. 547, 38 S. Ct. 547, 62 U. S. (L. ed.) 464, the court saying that the action was based upon the tortious conduct of the bank examiner, not in exertion of the state law, but in violation of it.

A suit by a foreign corporation against a state secretary of state and attorney general to enjoin the enforcement by them of state statutes imposing a permit tax and a franchise tax in violation of the Federal Constitution is not a suit against a state. *Looney v. Crane Co.*, (1917) 245 U. S. 178, 38 S. Ct. 85, 62 U. S. (L. ed.) 230.

In *Weiland v. Pioneer Irrigation Co.*, (C. C. A. 8th Cir. 1916) 238 Fed. 519, 151 C. C. A. 455, a suit against Colorado state officials, who had duties to perform in reference to the distribution of water from the streams of the state for irrigation purposes, to restrain them from violating the state law by interfering with the plaintiff's right to divert water, was held not to be a suit against the state.

A suit against the members of a state public safety commission to enjoin them from enforcing an order of the commission, on the ground that such order was not within the purview of the state statute defining the powers of the commission, is not a suit against the state. *Cook v. Burnquist*, (D. C. Minn. 1917) 242 Fed. 321.

2. Pleading Federal Question

a. Plaintiff Required to Show (p. 888)

In general.—"A case does so arise where an appropriate statement of the plaintiff's cause of action, unaided by any anticipation or avoidance of defenses, discloses that it really and substantially involves a dispute or controversy respecting the validity, construction, or effect of a law of Congress." *Hopkins v. Walker*, (1917) 244 U. S. 486, 37 S. Ct. 711, 61 U. S. (L. ed.) 1270.

g. Anticipation of Defense (p. 890)

In general.—A federal question was not sufficiently presented in a bill by a railroad company against the lessee of its road for specific performance of a contract in the lease to furnish free annual passes to the directors and officers of the lessor plaintiff, the bill alleging that the defendant claimed to be prevented from issuing such passes by virtue of provisions in the Interstate Commerce Acts of Congress. *Peterborough R. Co. v. Boston, etc., R. Co.*, (C. C. A. 1st Cir. 1917) 239 Fed. 97, 152 C. C. A. 147, quoting from

Louisville, etc., *R. Co. v. Mottley*, (1908) 211 U. S. 149, 152, 29 S. Ct. 42, 43, 53 U. S. (L. ed.) 126.

In *Bronson v. Emmet*, etc., Counties, (N. D. Ia. 1916) 237 Fed. 212, dismissing a bill on motion for want of jurisdiction, the court said: "It is the settled interpretation by the Supreme Court of the words of clause 'a' of subdivision 1 of section 24 of the Judicial Code that a suit 'arises under the Constitution or laws of the United States' only when the plaintiff's statement of his cause of action shows that it is based upon some provision of the Constitution or some law of the United States; and if it does not so appear from the plaintiff's petition or complaint, it cannot be shown by the answer of the defendant, or any subsequent pleading in the case, even a petition for the removal of a removable cause from the state court to a federal court."

4. Allegations Held Sufficient

a. Unconstitutional State Statute (p. 895)

Violation of the equal protection clause as a ground of jurisdiction was held to be sufficiently shown in a bill to enjoin state officers from taking action looking to the enforcement of certain state and local so-called franchise taxes assessed against public service corporations under state authority, upon the ground of a discrimination in valuation of the intangible property upon which the taxes were based, arising out of systematic undervaluation of other taxable property. *Greene v. Louisville, etc., R. Co.*, (1917) 244 U. S. 499, 37 S. Ct. 673, 61 U. S. (L. ed.) 1280, Ann. Cas. 1917E 88.

d. Construction of Federal Statute (p. 897)

Federal mining laws.—In *Hopkins v. Walker*, (1917) 244 U. S. 486, 37 S. Ct. 711, 61 U. S. (L. ed.) 1270, it was held that the bill in a suit to remove a cloud on the title of a placer mining claim stated a case of which the District Court had jurisdiction.

IX. SUITS ARISING UNDER CONSTITUTION

2. Municipal Ordinances

b. Impairment of Contract Obligation (p. 910)

A suit for injunction by a telephone company against a city, wherein the company attacked an ordinance or resolution of the city requiring the company to remove its poles and wires from the streets as an impairment of the contract constituted by other ordinances, was a suit within the jurisdiction of the federal District Court. *Mitchell v. Dakota Cent. Telephone Co.*, (1918) 246 U. S. 396, 38 S. Ct. 362, 62 U. S. (L. ed.) 793.

The federal District Court had jurisdiction of a bill to enjoin enforcement by

a city of an ordinance which would cause irreparable injury to the plaintiff street railway company and impair the obligation of a prior contract with the city. *Cincinnati v. Cincinnati & H. Traction Co.*, (1918) 245 U. S. 446, 38 S. Ct. 153, 62 U. S. (L. ed.) 389.

7. Denial of Equal Protection of Law (p. 920)

In a suit by a holder of a "death benefit certificate" against a fraternal benefit society organized under the Massachusetts laws, asking for appointment of a receiver, alleging that the state statute forbidding such suit in any court of the state unless brought by the attorney-general, deprived the plaintiff of the equal protection of the law, etc., it was held that no federal question was presented so as to give the court jurisdiction where the allegations in the plaintiff's bill complaining of the unconstitutionality of the statute did not constitute an essential part of the cause of action set forth, and were in no way necessary thereto, and did not show that whether the remedy sought was obtainable or not depended upon the result of the constitutional question raised. *Supreme Council, etc., v. Hobart*, (C. C. A. 1st Cir. 1917) 244 Fed. 385, 157 C. C. A. 11.

X. SUITS UNDER LAWS OF UNITED STATES

1. General Rules

a. Test Formulated by Judge Amidon (p. 923)

In *Fargo v. Cuneo*, (S. D. N. Y. 1917) 241 Fed. 726, it was held that every action by an interstate carrier to recover freight is necessarily based upon the Interstate Commerce Act, plus the rulings of the Commission, in carrying out the same, and therefore presents a federal question.

8. Suit Against Officers of National Banks (p. 930)

An action against directors in a national bank by a purchaser of its stock to recover damages for false reports of the bank's financial condition, upon which the plaintiff had relied, presents a federal question, since R. S. sec. 5239, in title NATIONAL BANKS, vol. 6, p. 873, expressly authorizes recovery of such damages, and especially as it was held in *Yates v. Jones Nat. Bank*, (1907) 206 U. S. 158, 27 S. Ct. 638, 51 U. S. (L. ed.) 1002, and to like effect in *Thomas v. Taylor*, (1912) 224 U. S. 73, 32 S. Ct. 403, 56 U. S. (L. ed.) 673, and *Jones Nat. Bank v. Yates*, (1916) 240 U. S. 541, 36 S. Ct. 429, 60 U. S. (L. ed.) 788, that the rule expressed by that statute is exclusive and precludes a common-law liability for fraud and deceit. *Chesbrough v. Woodworth*, (1917) 244 U. S. 72, 37 S. Ct. 579, 61 U. S. (L. ed.) 1000.

31. *Federal Employers' Liability Act* (p. 940)

Federal question ipso facto.—Where the allegations in a complaint by an administrator to recover for death of his intestate show that the deceased was employed in interstate commerce when injured, the case arises under a law of the United States, to wit, the federal Employers' Liability Act. *Great Northern R. Co. v. Alexander*, (1918) 246 U. S. 276, 38 S. Ct. 237, 62 U. S. (L. ed.) 713.

XII. DIVERSE CITIZENSHIP

2. *Citizen of a State* (p. 942)

Illustrations.—Where the plaintiff swore that some time before bringing the suit he had become a citizen of Maryland, and whether he had or had not depended upon the intention with which he had removed from Norfolk, Va., to Baltimore, and the District Court heard his testimony, and was obviously satisfied with it, the Circuit Court of Appeals was also satisfied. *Garrett v. Mallard*, (C. C. A. 4th Cir. 1916) 238 Fed. 335, 151 C. C. A. 351.

4. *Citizenship of Corporation* (p. 945)

In general.—For jurisdictional purposes a corporation is to be regarded as a citizen of the state by whose laws it was created. *Peterborough R. Co. v. Boston, etc., R. Co.*, (C. C. A. 1st Cir. 1917) 239 Fed. 97, 152 C. C. A. 147.

Doing business etc. in another state.—“The state in which a corporation is organized determines the citizenship, whether it has offices and transacts business in the state in which the suit is sought to be brought or not. *Johanson v. Alaska Treadwell Gold Min. Co.*, 225 Fed. 270.” *Martin v. Matson Nav. Co.*, (W. D. Wash. 1917) 239 Fed. 188.

12. *Arrangement of Parties as to Adverse Interests* (p. 954)

If such an arrangement defeats the jurisdiction the bill must be dismissed. *Hamer v. New York Rys. Co.*, (1917) 244 U. S. 266, 37 S. Ct. 511, 61 U. S. (L. ed.) 1125.

Suit to set aside will.—In a suit by heirs to set aside a will and for partition of the estate, one of the other heirs, who was also a legatee and was made a defendant, was interested adversely to the plaintiffs, and therefore could not be aligned with the latter in determining the question of diversity of citizenship. *Sutton v. English*, (1918) 246 U. S. 199, 38 S. Ct. 254, 62 U. S. (L. ed.) 664.

13. *Parties to Bills in Equity* (p. 957)

Where a bill was brought by citizens of Louisiana against citizens of Georgia, including permanent administrators of a decedent's estate, to have the plaintiffs declared next of kin and heirs entitled to the entire estate, alleging that several of the defendants claimed the entire estate

adversely to the plaintiffs, another citizen of Louisiana, who was made a defendant and whose interest in the estate, if he had any, would be merely in common with the others whose rights rested on the same ground with his, was held not to be an indispensable party; and, his citizenship being the same as the plaintiffs, he was stricken from the bill by amendment on his and their application. *Jennings v. Smith*, (S. D. Ga. 1917) 242 Fed. 561.

16. *Unnecessary Parties* (p. 961)

In general.—Where defendants brought into a suit in equity, by amendment of the bill on the court's order, were citizens of the same state as the plaintiff, but were not indispensable parties, the jurisdiction of the court was not ousted. *Weiland v. Pioneer Irrigation Co.*, (C. C. A. 8th Cir. 1916) 238 Fed. 519, 151 C. C. A. 455.

17. *Representative Parties* (p. 962)

Administrator.—In *Memphis St. R. Co. v. Moore*, (1917) 243 U. S. 299, 37 S. Ct. 273, 61 U. S. (L. ed.) 733, an action was brought in the federal District Court in Tennessee by a citizen of Arkansas in his representative capacity as administrator appointed by a Tennessee Probate Court against a Tennessee corporation for wrongfully causing the death of the decedent. A Tennessee statute provided as follows: “That whenever a nonresident of the state of Tennessee qualifies in this state as the executor or administrator of a person dying in or leaving assets or property in this state, for the purpose of suing and being sued, he shall be treated as a citizen of this state.” The remainder of the Act prescribed the method of service of summons upon such a nonresident executor or administrator. It was held that on the face of the plaintiff's declaration there was the requisite diversity of citizenship to give the federal court jurisdiction.

18. *Interveners and Substituted Parties* (p. 963)

Where a party made a defendant to a bill in equity by voluntary intervention was a citizen of the same state with the plaintiffs, an application of the plaintiffs and said defendant to amend the bill by striking out the latter was granted against the other defendants' objection, there being no contention that the application was collusively made, and it appearing to the court that said defendant was not an indispensable, though a proper, party. *Jennings v. Smith*, (S. D. Ga. 1917) 242 Fed. 561.

20. *Pleading Citizenship* (p. 964)

Corporation.—In *Peterborough R. Co. v. Boston, etc., R. Co.*, (C. C. A. 1st Cir. 1917) 239 Fed. 97, 152 C. C. A. 147, holding that the federal District Court in New Hampshire had no jurisdiction on

the ground of diverse citizenship of a suit in which the plaintiff was alleged to be a New Hampshire corporation and a citizen of that state and the defendant was alleged to be a Massachusetts corporation and a citizen of that state, the court took judicial notice that the defendant was a public corporation organized and existing under the laws of New Hampshire, doing business in said state, and therefore a citizen thereof.

XVI. SUITS BY ASSIGNEES

1. Purpose of Act (p. 974)

"This limitation on the jurisdiction of the United States courts has with some changes been in continuous force since the Judiciary Act of 1789. The history of this provision is set forth in the opinion of the Supreme Court of the United States in the case of *New Orleans v. Quinlan*, 173 U. S. 191 19 Sup. Ct. 329, 43 L. ed. 664; the three acts governing the matter before the enactment of the new Judicial Code being section 11 of the Judiciary Act of 1789, the Act of March 3, 1875, and the Act of March 3, 1887, as corrected by the Act of August 13, 1888. The purpose of this provision of the law seems to have been twofold: First, to narrow the jurisdiction of the District Court, as granted in the immediately preceding portion of the first subdivision of section 24 of the Judicial Code, over suits between citizens of different states and between citizens of a state and foreign states, citizens, or subjects; and, second, to prevent the creation of jurisdiction in the District Courts by assignment made for the purpose of bringing about an apparent diversity of citizenship." *Baltimore Trust Co. v. Screven County*, (S. D. Ga. 1916) 238 Fed. 834.

4. "Chose in Action" (p. 975)

Construction of term.—It was held that this provision in the Judicial Code did not preclude a suit by the assignee of an oil and gas mining lease in Oklahoma against the landowners and a second lessee to restrain the latter from drilling the land for oil and gas and to cancel his lease as a cloud on the plaintiff's title although the plaintiff and his immediate assignor were citizens of the same state. *Shaffer v. Marks*, (E. D. Okla. 1917) 241 Fed. 139.

The words of this section refer only to a cause of action based on contract. *Stotesbury v. Huber*, (E. D. N. Y. 1916) 237 Fed. 413, citing *Kolze v. Hoadley*, (1906) 200 U. S. 76, 26 S. Ct. 220, 50 U. S. (L. ed.) 377, and *Shoecraft v. Bloxham*, (1888) 124 U. S. 730, 8 S. Ct. 686, 31 U. S. (L. ed.) 574.

An action for money had and received was held not to be a suit to recover upon any promissory note, or other chose in action. *Menasha Wooden Ware Co. v.*

Southern Oregon Co., (C. C. A. 9th Cir. 1917) 244 Fed. 83, 156 C. C. A. 511; 244 Fed. 90, 156 C. C. A. 518.

Share in a decedent's estate.—An assignment of a share amounting to a stated sum out of a supposed larger legacy is not within the language of this section, as a legacy establishes a beneficial and not a contractual claim. *Stotesbury v. Huber*, (E. D. N. Y. 1916) 237 Fed. 413.

7. Applicability

b. Application With Regard to Persons (p. 982)

A suit against an alien by a citizen administrator of an alien assignee of an alien is within the original jurisdiction of a federal District Court, and therefore removable from the state to the federal court. *Sands v. Carruthers*, (S. D. N. Y. 1917) 243 Fed. 636, where the plaintiffs were citizens of New York and administrators of one Sands, a citizen of New York, who was assignee of a chose in action against an alien, defendant in this suit.

8. Matters Relating to Jurisdiction (p. 984)

Jurisdiction must appear on record.—"The decisions of this court have settled the following propositions . . . That the bill or other pleading must contain an averment showing that the suit could have been maintained by the assignor if no assignment had been made." *Kolze v. Hoadley*, (1906) 200 U. S. 76, 26 S. Ct. 220, 50 U. S. (L. ed.) 377.

In *Houck v. Brinkley Bank*, (C. C. A. 8th Cir. 1917) 242 Fed. 881, 155 C. C. A. 469, reversing judgment for the plaintiff in a federal District Court in Missouri, and directing a dismissal for want of jurisdiction, the court, premising that the note in suit was payable to bearer under the law merchant and under the Negotiable Instrument Law of Missouri, said: "The note in question is payable to the order of the makers thereof, and is not a liability of such makers until it is negotiated or transferred by them. The petition alleges that it was first indorsed by the defendants in blank, and delivered to the Bankers' Trust Company, which afterwards and before maturity, sold and delivered the same in the usual course of business to the plaintiff. The instrument in suit is made payable upon its face at the office of the Bankers' Trust Company at St. Louis, Mo. From this it appears to be a corporation or association of Missouri, which could not maintain an action thereon in the federal court against the defendants as makers who are citizens of Missouri. The instrument, therefore, only became an obligation of the makers when it was indorsed by them and put in circulation, and in this manner, under the allegations of the petition, came to the

plaintiff, Bank of Brinkley, and as there is no averment in the petition that the Bankers' Trust Company of St. Louis could have brought suit thereon in the federal court, the petition fails to show that the United States District Court for the Eastern District of Missouri had any jurisdiction of this controversy. It follows that the suit should have been dismissed by the District Court upon its own motion for want of jurisdiction. . . . In *New Orleans v. Quinlan*, 173 U. S. 191, 193, 19 Sup. Ct. 329, 43 L. ed. 664, the certificates sued upon were made by the defendant city, a corporation and the Circuit Court therefore had jurisdiction because of that fact."

Actual relation of parties controls.—In *Baltimore Trust Co. v. Screven County*, (S. D. Ga. 1916) 238 Fed. 834, an action in a federal District Court in Georgia by Baltimore banks against a Georgia county and Georgia guarantors on notes made by the county to a Georgia bank, which transferred them to the plaintiffs it was held on motion to dismiss that the court had jurisdiction of the action, as the Georgia bank, under the facts shown, had no beneficial interest and was a mere agent.

XVII. SERVICE OF PROCESS (p. 988)

A judgment in personam cannot be rendered without personal service of process in the district. *Dutton v. Waycross First Nat. Bank*, (S. D. Fla. 1917) 244 Fed. 236.

The conformity acts.—"It is settled law that jurisdiction cannot be acquired in an action begun in this court by the issue and levy of an attachment, but that personal service of process upon the defendant is indispensable." *Cleveland, etc., Coal Co. v. J. H. Hillman, etc., Co.*, (N. D. Ohio 1917) 245 Fed. 200.

Privilege from service of civil process.—In *Stewart v. Ramsay*, (1916) 242 U. S. 128, 37 S. Ct. 44, 61 U. S. (L. ed.) 192, where jurisdiction of the federal District Court in Illinois was invoked on the ground of diverse citizenship, the defendant pleaded in abatement that he was a resident of Colorado and was served with process while in attendance upon the District Court as a witness in a case wherein he was plaintiff, and that the process was served while he was returning from the court room after testifying. Judgment sustaining a demurrer to the plea was affirmed.

Service on corporation.—Service upon a sales agent of a corporation who resided in the eastern district of New York, but who had his office in the southern district was insufficient service upon the corporation to give jurisdiction to the federal court in the eastern district, where the corporation made sales and deliveries of coal in the eastern district, but had no regular place of business or representa-

tive in that district. *Harasimowicz v. Pennsylvania R. Co.*, (E. D. N. Y. 1916) 232 Fed. 295.

Service on foreign corporation.—See also notes under vol. 5, p. 446, Jud. Code, § 38, "5. Service on foreign corporation (p. 460)," *infra*, p. 1111.

In *Philadelphia, etc., R. Co. v. McKibbin*, (1917) 243 U. S. 264, 37 S. Ct. 280, 61 U. S. (L. ed.) 710, it was held that the federal District Court in New York acquired no jurisdiction over the defendant Pennsylvania corporation by service of summons on its president while he was passing through New York, engaged exclusively on personal matters unconnected with the company's affairs.

A sales agent of a foreign corporation, without discretionary powers, and acting under the direction and control of the home office, is not a managing agent within the meaning of a state statute authorizing service upon such agent. *American Oil, etc., Co. v. Western Gas Constr. Co.*, (C. C. A. 2d Cir. 1917) 239 Fed. 505, 152 C. C. A. 383.

"Making a contract for sale of goods in another state is not doing business in the latter state. An isolated or single sale of goods in another state, or even occasional repetitions of such sales, would not be doing business within the state." *Beach v. Kerr Turbine Co.*, (N. D. Ohio 1917) 243 Fed. 706, holding, however, that in the instant case the defendant foreign corporation was doing business within the state.

XVIII. ANCILLARY PROCEEDINGS

2. Jurisdiction in General (p. 989)

Citizenship, or amount or nature of controversy not controlling.—"The law is that the jurisdiction of the court as regards the principal suit cannot be questioned in an ancillary proceeding or suit. . . . The rule is that neither the citizenship of the parties nor any other factor that would ordinarily determine jurisdiction has any bearing on the right of the court to entertain jurisdiction of an ancillary suit." *McCabe v. Guaranty Trust Co.*, (C. C. A. 2d Cir. 1917) 243 Fed. 845, 156 C. C. A. 357.

A bill was not ancillary to foreclosure proceedings in which a decree had been entered and a sale had thereunder where it set up a wholly independent cause of action concerning which no reservation was made in the decree of foreclosure. *Hamer v. New York Rys. Co.*, (1917) 244 U. S. 266, 37 S. Ct. 511, 61 U. S. (L. ed.) 1125.

3. Particular Proceedings and Matters

e. Enjoining Pending Actions (p. 993)

In general.—Where a plaintiff began several actions at law in a federal court against a guaranty company, all being cognizable in that court because arising

under a law of the United States, and the guaranty company, conceiving that it had a partial equitable defense, not admissible at law, which was common to all the cases, and other partial defenses in particular cases, exhibited in that court a bill describing the actions at law, setting forth the defenses, showing that nothing was in controversy beyond the defenses, and praying that the entire matter be examined and adjudicated in a single proceeding in equity and further proceedings at law enjoined, this bill was properly framed as a dependent and ancillary bill and the court had jurisdiction to entertain it as such in virtue of the jurisdiction already acquired. *Eichel v. U. S. Fidelity, etc., Co.*, (1917) 245 U. S. 102, 38 S. Ct. 47, 62 U. S. (L. ed.) 177.

Vol. IV, p. 1005, Jud. Code, sec. 24, par. third.

IV. SAVING OF COMMON-LAW REMEDY (p. 1008)

State Workmen's Compensation Law.—By amendment of this paragraph third in the Act of Oct. 6, 1917, ch. 97, 40 Stat. L. 395, given *ante*, this volume, p. 401, "rights and remedies under the Workmen's Compensation Law of any state" are saved to claimants. Prior to that amendment it was held that "the remedy which the [New York] compensation statute attempts to give is of a character wholly unknown to the common law, incapable of enforcement by the ordinary processes of any court, and is not saved to suitors from the grant of exclusive jurisdiction" in Judicial Code, § 256, par. third; and also that "this remedy is not consistent with the policy of Congress to encourage investments in ships, manifested in the Acts of 1851 and 1884 (Rev. Stats. secs. 4283-4285; § 18, Act of June 26, 1884, c. 121, 23 Stat. 57) which declare a limitation upon the liability of their owners." *Southern Pac. Co. v. Jensen*, (1917) 244 U. S. 205, 37 S. Ct. 524, 61 U. S. (L. ed.) 1086, Ann. Cas. 1917E 900, L. R. A. 1918C 451 (four justices dissenting; *reversing* (1915) 215 N. Y. 514, 109 N. E. 600, Ann. Cas. 1916B 276, L. R. A. 1916A 403).

The ruling in *Southern Pac. Co. v. Jensen*, 244 U. S. 205, 37 S. Ct. 524, 61 U. S. (L. ed.) 1086, Ann. Cas. 1917E 900, L. R. A. 1918C 451, set forth in the preceding paragraph was followed in respect to the California Workmen's Compensation Act in *Hartman v. Toyo Kisen Kaisha Steamship Co.*, (N. D. Cal. 1917) 244 Fed. 567, holding that jurisdiction of an action for damages for personal injuries did not rest exclusively with the state Industrial Accident Commission.

Moreover, in *North Alaska Salmon Co. v. Pillsbury*, (1916) 174 Cal. 1, 162 Pac. 93, it was held that the California Workmen's Compensation Act did not cover claims arising upon injuries inflicted outside the territorial limits of the state, as were the injuries in the case in the federal District Court above cited.

Contra.—In *Northern Pac. Steamship Co. v. Industrial Acc. Commission*, (1917) 174 Cal. 346, 163 Pac. 199, decided before the decision of the United States Supreme Court in *Southern Pac. Co. v. Jensen*, cited in the foregoing paragraphs, it was held that the state Industrial Accident Commission had jurisdiction to make an award in the case of a seaman in the employ of the steamship company, who was injured while on his vessel, owned by citizens of the state, upon the high seas, and an award by the Commission was affirmed as against the contention that the federal District Court in admiralty had exclusive jurisdiction.

Likewise in *Lindstrom v. Mutual Steamship Co.*, (1916) 132 Minn. 328, 156 N. W. 669, L. R. A. 1916D 935, it was held that the Minnesota Workmen's Compensation Law furnished the exclusive remedy for an employee of a fuel company injured by negligence of a steamship company while he was unloading a vessel on navigable waters within the territorial jurisdiction of the state.

Action by seaman for damages for personal injuries.—In *Chelentis v. Luckenbach Steamship Co.* (1918) 245 U. S. 655, 38 S. Ct. 13, 62 U. S. (L. ed.) 533, the plaintiff was employed as fireman on board the defendant's steamship, and while performing his duties on the high seas sustained severe injuries from the alleged negligence and an improvident order of a superior officer, and sued therefor in a New York state court, demanding full indemnity for his damage, and the cause was only removed to the federal court on the ground of diverse citizenship. On the trial he did not question seaworthiness of ship or her appliances and announced that no claim was made for maintenance, cure, or wages. At conclusion of plaintiff's evidence the court directed a verdict for defendant, and judgment thereon was affirmed by the Circuit Court of Appeals and by the Supreme Court on certiorari, the latter court holding that the work about which plaintiff was engaged was maritime in its nature; that his employment was a maritime contract; that the injuries received were likewise maritime; that the parties' rights and liabilities were matters clearly within the admiralty jurisdiction; that unless in some way there was imposed upon the owners a liability different from that prescribed by maritime law plaintiff could properly demand only wages, maintenance, and cure; that under the doctrine approved in

Southern Pac. Co. v. Jensen, (1917) 244 U. S. 205, 37 S. Ct. 524, 61 U. S. (L. ed.) 1086, Ann. Cas. 1917E. 900, L. R. A. 1918C 451, no state has power to abolish the well-recognized maritime rule concerning measure of recovery, and substitute therefor the full indemnity rule of the common law, as such a substitution would distinctly and definitely change or add to the settled maritime law; that, under the clause of the federal statute "saving to suitors, in all cases the right of a common-law remedy," etc., a right sanctioned by the maritime law may be enforced through any appropriate remedy recognized at common law, but does not reveal an intention to give the complaining party an election to determine whether the defendant's liability shall be measured by common-law standards rather than those of the maritime law; and that under the circumstances of the case, without regard to the court where plaintiff might ask relief, his rights were those recognized by the law of the sea. Speaking of section 20 of the Seamen's Act of March 4, 1915, ch. 153, 1916 Supp., p. 251, which provides that "in any suit to recover damages for any injury sustained on board vessel or in its service seamen having command shall not be held to be fellow-servants with those under their authority," the court further said: "Full effect must be given this whenever the relationship between such parties becomes important. But the maritime law imposes upon a shipowner liability to a member of the crew injured at sea by reason of another member's negligence, without regard to their relationship; it was of no consequence, therefore, to petitioner, whether or not the alleged negligent order came from a fellow servant; the statute is irrelevant. The language of the section discloses no intention to impose upon shipowners the same measure of liability for injuries suffered by the crew while at sea as the common law prescribes for employers in respect of their employees on shore."

"Our conclusion is that an action in personam may be maintained for a tort committed on the high seas if the accident is attributable to the 'unseaworthiness' of the vessel; that the common-law courts of a state have jurisdiction concurrent with the federal courts when proceeding in personam; and that the state court will grant the relief that a common-law court would have granted had the case been originally triable in such court." *Larson v. Alaska Steamship Co.*, (1917) 96 Wash. 665, 165 Pac. 880, L. R. A. 1917F 671.

IX. FOREIGN PERSONS OR PROPERTY (p. 1019)

A libel in rem against a foreign ship by a foreign subject for a tort committed

on the high seas is within the admiralty jurisdiction of the District Court, nor is the ship immune on the ground that it has been requisitioned by the foreign government for the purpose of transporting military supplies where the executive has not demanded the ship's release. *The Atualita*, (C. C. A. 4th Cir. 1916) 238 Fed. 909, 152 C. C. A. 43.

Vol. IV, p. 1036, Jud. Code, sec. 24, par. sixth.

A suit by a postmaster to enjoin a post office inspector from removing and delivering to any third party, any of the property in plaintiff's possession as postmaster alleging that the defendant claimed that the plaintiff had been removed and alleging that said removal was unlawful, was within the jurisdiction of a federal District Court regardless of the amount in controversy. *Porter v. Cable*, (C. C. A. 8th Cir. 1917) 246 Fed. 244, 158 C. C. A. 404.

Vol. IV, p. 1037, Jud. Code, sec. 24, par. seventh.

I. SUITS ARISING UNDER PATENT LAWS (p. 1037)

In general.—Where there was no averment in plaintiff's bill that either they or the defendants were the owners of a patent or that any patent had been issued to anybody, but only that application for a patent had been filed by parties who had assigned their rights to the plaintiffs and a defendant, and the suit was brought to prevent the unlawful use of information, which might relate to an invention about the patentability of which there was contention, which had been obtained under such confidential circumstances that it ought not to be used to plaintiffs' harm, the suit did not arise under the patent laws and a state court had jurisdiction. *Aronson v. Orlov*, (1917) 228 Mass. 1, 116 N. E. 951.

Vol. IV, p. 1047, Jud. Code, sec. 24, par. eighth.

Action by railway carrier against consignee to recover certain charges.—Jurisdiction under this paragraph extends to a suit by a railway carrier against a commission merchant, the consignee of interstate shipments of live stock, to recover the charges for disinfecting the cars, claimed to be due under a tariff duly filed, published, and approved as required by the Interstate Commerce Act, although such consignee, admitting the legality of the charges, defends upon the ground that the carrier, having led him to believe that the amount demanded of and paid by him before he remitted to his principals

the entire net proceeds of the sales of such live stock constituted full settlement, is estopped to demand more. *Louisville, etc., R. Co. v. Rice*, (1918) 247 U. S. 201, 38 S. Ct. 429, 62 U. S. (L. ed.) 1071, where the court said: "The Interstate Commerce Act requires carrier to collect and consignee to pay all lawful charges duly prescribed by the tariff in respect of every shipment. This duty and obligation grow out of and depend upon that act."

A complaint by an interstate carrier to recover freight charges shows a case within this paragraph: *Fargo v. Cuneo*, (S. D. N. Y. 1917) 241 Fed. 726.

Vol. IV, p. 1059, Jud. Code, sec. 24, par. twentieth.

Process—Limitation.—This section prescribes no system of process to be followed by the District Courts, and those courts may follow their established practice or adopt that established for the guidance of the Court of Claims. Following the practice of the District Court, an action against the United States may be instituted by service of a writ of summons upon the district attorney, and the impetration of the writ, not the filing of a statement of claim, tells the statutory period of limitation, and for all the purposes of procedure the United States is to be regarded the same as any other defendant. *Mill Creek, etc., Nav., etc., Co. v. U. S.*, (E. D. Pa. 1917) 246 Fed. 1013.

Recovery of taxes paid under protest to a collector of internal revenue may be had in a suit under this paragraph. *Philadelphia, etc., R. Co. v. Lederer*, (E. D. Pa. 1917) 239 Fed. 184, citing *U. S. v. Emery, etc., Realty Co.*, (1915) 237 U. S. 28, 35 S. Ct. 499, 59 U. S. (L. ed.) 825.

United States not real defendants.—Where a contractor agreed with the United States to furnish certain machinery, etc., for a public work and made an agreement with a subcontractor whereby the latter agreed with the contractor to furnish said machinery, and the government, on completion of the work, withheld from the final payment to the contractor a certain sum on account of asserted dereliction of the subcontractor, and the contractor in like manner withheld said sum from the subcontractor, and the contractor and a surety company for the use and benefit of all persons furnishing labor, etc., joined in a suit against the United States and the subcontractor alleging that the latter refused to recognize the right of the government to withhold said sum and was threatening to sue the contractor, and that if said subcontractor had a valid claim against the contractor the latter had by equity the same lawful claim against the United States, and that in order to do justice to all parties an accounting should be had between the plaintiff con-

tractor, the defendant subcontractor and the United States, praying that the court adjudicate between the respective parties as the right should appear, but without praying for judgment against the United States directly in the proceeding—it was held that the suit was primarily between the contractor and the subcontractor, and as they were citizens and residents of the state in which the suit was brought, the federal court had no jurisdiction. *National Surety Co. v. Washington Iron Works*, (W. D. Wash. 1917) 243 Fed. 260.

Costs against United States.—In a suit under this paragraph where judgment is rendered for the plaintiff costs may be allowed against the United States. *U. S. v. Cress*, (1917) 243 U. S. 316, 37 S. Ct. 380, 61 U. S. (L. ed.) 746.

Vol. V, p. 16, Jud. Code, sec. 28.

III. Right of removal, in general.

1. Entirely statutory.
4. Waiver of right of removal.
 - a. In general.
 - b. Matters occurring before petition for removal.

IV. Removable suits.

1. In general.
2. "Suit."
10. Within original "jurisdiction by this title."
 - d. Proceedings for mandamus.
 - j. As to district of residence of parties.

V. Removal from and to what court.

2. To what court.

VI. Amount in controversy.

1. Same as for original jurisdiction.
4. Amount in dispute, how shown.
 - d. Counterclaim or cross-bill.

VII. Suits under constitution, laws or treaties.

5. Nonfederal united with federal questions.
10. Federal question must appear in plaintiff's pleading.
11. Removable cases.
 - g. Suit under postal laws.
 - h. Suit on federal Employers' Liability Act.
 - i. Suit by or against federal corporation.

VIII. Proviso excluding cases arising under federal Employers' Liability Act.

IX. Citizenship as jurisdictional element.

7. Corporation.

X. Diverse citizenship, alienage, or foreign state as ground for removal.

3. Several parties plaintiff or defendant.
 - c. Formal, nominal, or unnecessary parties.

4. Fraudulent joinder of defendants.
 - a. As ground for removal, in general.
6. Suits by assignee.
- XXI. Separable controversy as ground of removal.
 3. Tests of separability.
 - a. In general.
 11. Separate defenses.
 - b. Actions, ex contractu.
 16. Separable controversy, how shown.
 34. Miscellaneous equity suits.
 36. Action of tort against master and servant.
 37. Action of tort against lessor and lessee railroad company.
 41. Action against principal and surety.
- XIII. Who may remove a suit.
 2. Only a defendant.
 3. Only a nonresident defendant.
 - b. Suit by or against alien.
 5. For diverse citizenship alone.
 - c. Joinder in petition for removal.
- XVI. Order of remand not reviewable.
 2. Indirect review forbidden.
 - a. In general.
 - d. On writ of error to state court.

III. RIGHT OF REMOVAL, IN GENERAL

1. Entirely statutory (p. 31)

Dependent on Act of Congress.—"It is of course familiar law that the right of removal being statutory, a suit commenced in a state court must remain there until cause is shown for its transfer under some act of Congress." *Great Northern R. Co. v. Alexander*, (1918) 246 U. S. 276, 38 S. Ct. 237, 62 U. S. (L. ed.) 713.

"The right of removal of a suit from a state to a federal court is purely a creature of statute," and though the subject matter of a controversy be one over which federal courts of equity have general jurisdiction concurrent with courts of the state, it is not removable if there is not diverse citizenship or other element required in the removal statute. *Genesee Valley Trust Co. v. Kansas City, etc., R. Co.*, (D. C. Kan. 1917) 240 Fed. 524, remanding a removed equity suit.

4. Waiver of Right of Removal

a. In General (p. 38)

By filing cross-complaint for affirmative relief.—In *Hansen v. Pacific Coast Asphalt Cement Co.* (S. D. Cal. 1917) 243 Fed. 283, it was held that a defendant who filed an answer and cross-complaint seeking a personal judgment against the plaintiff thereby became a plaintiff and ceased to be a "defendant" entitled to removal; and it was immaterial whether such cross-complaint was filed at the same

time with the petition and bond for removal or subsequently.

b. Matters Occurring Before Petition for Removal (p. 39)

Where a defendant takes no exception to an order extending the time within which to file a complaint.—"The decisions in this state interpretative of the statute are to the effect that when the time to file pleadings has been extended on the application of the parties, or when such time is given at some particular term by order of court and same is not objected to, such order is taken to have been acquiesced in by defendant, and the right of removal is thereby waived." *Dills v. Champion Fiber Co.*, (N. C. 1917) 94 S. E. 694, affirming denial of a petition for removal.

IV. REMOVABLE SUITS

1. In General (p. 43)

Nonremovable united with removable causes.—"I am of opinion that, when a plaintiff sets up two separate causes of action, even in the alternative, and seeking only one recovery, one of which causes of action is removable and the other is not removable, the defendant may remove the entire case to this court." Per *Westenhaver, J.*, in *Bedell v. Baltimore, etc., R. Co.*, (N. D. Ohio 1917) 245 Fed. 788, 791. See also *Patterson v. Bucknall*, (S. D. N. Y. 1913) 203 Fed. 1021 and cases cited in notes to this section 28 under division VIII *infra*, p. 1100, and cases cited in vol. 5, p. 79 under subheading "5. Nonfederal united with federal question."

2. "Suit" (p. 43)

Appeal from assessment for taxation.—In *In re Mississippi River Power Co.*, (S. D. Ia. 1917) 241 Fed. 194, denying a motion to remand, it was held that the proceedings upon appeal constituted a "suit" for removal purposes.

10. Within Original "Jurisdiction by this Title"

d. Proceedings for Mandamus (p. 54)

Mandamus not real nature of proceeding.—In *State v. Tacoma Ry., etc., Co.*, (W. D. Wash. 1910) 244 Fed. 989, a motion to remand a removed proceeding for mandamus, was denied upon the ground that the proceeding was in reality one in which the jurisdiction of the court was invoked to compel specific performance of a contract.

The foregoing case distinguished.—In *State v. Puget Sound Traction, etc., Co.*, (W. D. Wash. 1917) 243 Fed. 748, a proceeding was brought in the state court by the filing of an affidavit by the mayor on behalf of the city of Seattle, to obtain a writ of mandamus directed against the defendant foreign corporation to compel it to maintain and operate street railways

pursuant to accepted ordinances of the city. The court granted a motion to remand, distinguishing the case cited in the last preceding paragraph.

j. As to District of Residence of Parties
(p. 57)

In general.—Where the plaintiff in a suit in a New York court was a citizen of Pennsylvania and the defendant a citizen of New Jersey, the cause was remanded on motion of the plaintiff after its removal to the federal court in New York. *O'Neil v. Birdseye*, (S. D. N. Y. 1917) 244 Fed. 254.

Where there is the requisite diversity of citizenship and amount in controversy, a suit by a plaintiff in the court of a state of which neither party is a citizen may be removed by the defendant to the federal court in that district. *Hohenberg v. Mobile Liners, Inc.*, (S. D. Ala. 1917) 245 Fed. 169, denying plaintiff's motion to remand.

Suit by alien.—In *Keating v. Pennsylvania Co.*, (N. D. Ohio 1917) 245 Fed. 155, the court said: "The plaintiff is an alien subject of the king of Great Britain, and the defendant is a corporation organized and existing under the laws of the state of Pennsylvania, and having its principal office in that state. The defendant is, therefore, a citizen and resident of the state of Pennsylvania. This action was brought in the court of common pleas of Cuyahoga county, Ohio, and on application of the defendant, made in due time, was removed to this court. The plaintiff now appears specially, and moves to remand on the ground that, on the facts above stated, this action could not originally have been brought in this court, and cannot, therefore, be removed here." Upon elaborate consideration, the motion to remand was denied.

Objection by plaintiff.—A suit in which the jurisdiction of the federal court, if there be any, depends upon the presence of a federal question is not removable, against the objection of the plaintiff, by a defendant foreign corporation, which is therefore not an inhabitant of the district. *Orr v. Baltimore, etc., R. Co.*, (S. D. N. Y. 1914) 242 Fed. 608, remanding the case.

V. REMOVAL FROM AND TO WHAT COURT

2. To What Court (p. 61)

In general.—In *Ostrom v. Edison*, (D. C. N. J. 1917) 244 Fed. 228, an action was brought in a New York state court against a citizen of New Jersey, by a citizen of New York, suing on a claim twice assigned, the original assignor having been an alien residing in New York city, and the plaintiff's immediate assignor a New York corporation. The

action was removed by the defendant into the federal district for New Jersey, but here remanded by that court for the reason that Judicial Code, § 29, provides for removal only "into the district court to be held in the district where such suit is pending."

VI. AMOUNT IN CONTROVERSY

1. Same as for Original Jurisdiction
(p. 67)

The last proviso to this section forbids removal of certain suits against carriers under the Interstate Commerce Act as amended, unless the amount in controversy exceeds \$3,000. Where no part of a plaintiff's pleading attempted to allege a primary liability of the defendant under the Interstate Commerce Act otherwise than as a carrier, the action could not be removed if the plaintiff claimed less than \$3,000. *Emery v. American Refrigerator Co.*, (1918) 246 U. S. 634, 38 S. Ct. 414, 62 U. S. (L. ed.) 912.

4. Amount in Dispute, How Shown

d. Counterclaim or Cross-Bill (p. 74)

Counterclaim.—In *Harley v. Firemen's Fund Ins. Co.*, (W. D. Wash. 1913) 245 Fed. 471, the court granted a motion to remand an action at law removed by a defendant who had set up a counterclaim for \$158.40, and alleged in his petition for removal that the plaintiff's claim was fraudulently reduced in order to prevent removal.

VII. SUITS UNDER CONSTITUTION, LAWS OR TREATIES

5. Nonfederal United with Federal Questions (p. 79)

"When one cause of action is stated which involves a controversy arising under the Constitution and laws of the United States, the right to remove exists, and the entire case is thereby transferred to the federal courts. If this were not true, the federal courts would be obliged to yield the right to take jurisdiction whenever a part of the cause was not removable, and thereby the jurisdiction of the federal courts might oftentimes be ousted." *Per Westenhaver, J.*, in *Bedell v. Baltimore, etc., R. Co.*, (N. D. Ohio 1917) 245 Fed. 788, 791.

10. Federal Question Must Appear in Plaintiff's Pleading (p. 79)

In general.—Whether a case is removable or not as arising under the laws of the United States is to be determined by the allegations of the plaintiff's complaint or petition, and if the case does not thus appear to be removable it cannot be made removable by any statement in the peti-

tion for removal or in subsequent pleadings by the defendant. *Great Northern R. Co. v. Alexander*, (1918) 246 U. S. 276, 38 S. Ct. 237, 62 U. S. (L. ed.) 713.

Averments held insufficient.—In *Smith v. Barnett*, (W. D. N. Y. 1917) 242 Fed. 83, the plaintiff, as receiver of a railroad company, brought a suit in equity to enjoin the defendants from carrying out and continuing a conspiracy to injure plaintiff's company, by violating a contract with the plaintiff by which traffic was to be routed over the line of his company. The defendants filed a petition for removal, contending that the Interstate Commerce Act substantially regulates the routing of traffic, with the result that the contract set up by the plaintiff was void, as its effect was to deprive shippers of the right to direct the routing of their commodities, etc., and therefore that the cause was governed by the federal statute. But the court granted a motion to remand.

11. Removable Cases

g. Suit Under Postal Laws (p. 85)

A suit by a postmaster to enjoin a post office inspector from removing and delivering to any third party any of the property in plaintiff's possession as postmaster, alleging that the defendant claimed that the plaintiff had been removed, and alleging that said removal was unlawful, was within the original jurisdiction of a federal District Court, regardless of the amount in controversy, under Judicial Code, § 24, par. sixth, and being instituted in a state court was removable to the federal court. *Porter v. Coble*, (C. C. A. 8th Cir. 1917) 246 Fed. 244, 158 C. C. A. 404.

h. Suit on Federal Employers' Liability Act (p. 85)

A federal question appears where the allegations in a complaint against an interstate railroad company, to recover for personal injuries, show that plaintiff was employed in interstate commerce when injured; and the action would be removable were it not for the proviso in Judicial Code, § 28, forbidding removal of actions based on the federal Employers' Liability Act. *Great Northern R. Co. v. Alexander*, (1918) 246 U. S. 276, 38 S. Ct. 237, 62 U. S. (L. ed.) 713.

i. Suit by or Against Federal Corporation (p. 86)

The Act of Jan. 28, 1915, ch. 22, § 5, in vol. VI, p. 238, operates to prevent a defendant from removing a case on the ground that it was incorporated under an Act of Congress. *Texas, etc., R. Co. v.*

Hanson, (Tex. Civ. App. 1916) 189 S. W. 289.

VIII. PROVISIO EXCLUDING CASES ARISING UNDER FEDERAL EMPLOYERS' LIABILITY ACT (p. 92)

Diversity of citizenship cannot be a ground for removal of a case arising under the federal Employers' Liability Act. *Southern R. Co. v. Puckett*, (1917) 244 U. S. 571, 37 S. Ct. 703, 61 U. S. (L. ed.) 1321, following *Kansas City Southern R. Co. v. Leslie*, (1915) 238 U. S. 599, 35 S. Ct. 844, 59 U. S. (L. ed.) 1478; *St. Joseph, etc., R. Co. v. Moore*, (1917) 243 U. S. 311, 37 S. Ct. 278, 61 U. S. (L. ed.) 741.

Where the plaintiff's complaint shows a case arising under the federal Employers' Liability Act, the action cannot be removed on the ground of diverse citizenship of the parties. *Great Northern R. Co. v. Alexander*, (1918) 246 U. S. 276, 38 S. Ct. 237, 62 U. S. (L. ed.) 713.

Fraudulent allegations to prevent removal.—There seems to be no doubt that an action on the federal Employers' Liability Act between parties of diverse citizenship would be removable on the ground of diversity of citizenship upon a petition containing allegations meeting the requirements of the cases set forth in volume 5, pp. 293-301, and showing that the plaintiff's allegations that the injury occurred in interstate commerce were knowingly false and were fraudulently made. See *Great Northern R. Co. v. Alexander*, (1918) 246 U. S. 276, 38 S. Ct. 237, 62 U. S. (L. ed.) 713.

Federal question involved.—An action on the federal Employers' Liability Act involves a federal question, but is not removable upon that ground. *Great Northern R. Co. v. Alexander*, (1918) 246 U. S. 276, 38 S. Ct. 237, 62 U. S. (L. ed.) 713.

Separate counts on common law and state statutes.—In *Bedell v. Baltimore, etc., R. Co.*, (N. D. Ohio 1917) 245 Fed. 788, denying motions to remand several actions brought by several plaintiffs against the defendant, the court said: "I am of opinion that, when a plaintiff sets up two separate causes of action, even in the alternative, and seeking only one recovery, one of which causes of action is removable and the other is not removable, the defendant may remove the entire case to this court."

Action against railroad company and Pullman company.—An action solely against the Pullman Company for death of plaintiff's decedent in its employment would be removable, if there was the necessary diversity of citizenship, and so would an action brought against a non-resident railroad company and the Pullman Company where the plaintiff alleged

employment solely by the Pullman Company. But where plaintiff alleged employment of his decedent by the railroad company and death caused by the concurrent negligence of both defendants, and the latter removed the cause upon a petition alleging that the employment was solely by the Pullman Company, and the plaintiff moved to remand, the court made an order requiring both plaintiff and defendants to file affidavits and counter-affidavits as to the fact of employment, with the privilege of cross-examination by the plaintiff. In open court, upon notice, of the persons making affidavits for defendants. *Martin v. New York, etc., R. Co.*, (S. D. N. Y. 1917) 241 Fed. 696.

IX. CITIZENSHIP, AS JURISDICTIONAL ELEMENT

7. Corporation (p. 98)

The state in which a corporation is organized determines its citizenship, whether it has offices and transacts business in the state in which the suit is sought to be brought or not. *Johanson v. Alaska Treadwell Gold Min. Co.*, 225 Fed. 270." *Martin v. Matson Nav. Co.*, (W. D. Wash. 1917) 239 Fed. 188.

X. DIVERSE CITIZENSHIP, ALIENAGE, OR FOREIGN STATE AS GROUND FOR REMOVAL

3. Several Parties Plaintiff or Defendant

c. Formal, Nominal, or Unnecessary Parties (p. 106)

Unnecessary party.—In *Seattle v. Great Northern R. Co.*, (W. D. Wash. 1913) 239 Fed. 1009, where a Washington railroad corporation had constructed a tunnel in the city of Seattle and subsequently sold and conveyed to a foreign corporation all its properties and franchises, and had by reason of the statute of limitations ceased to be liable in damages for negligent construction and operation of said tunnel, it was not a necessary party to an action for the recovery of such damages against said foreign corporation, although the franchise and property thus conveyed were not relieved from liability.

4. Fraudulent Joinder of Defendants

a. As Ground for Removal, in General (p. 113)

"While the plaintiff may, in good faith, proceed in the state court upon a cause of action which it alleges to be joint, it is equally true that the federal court will not sanction devices intended to prevent a removal to the federal court where one has a right to such removal, and should be equally ready to protect the right to proceed in the federal court as to permit the state court in a proper case to retain

its own jurisdiction." *Seattle v. Great Northern R. Co.*, (W. D. Wash. 1913) 239 Fed. 1009.

6. Suits by Assignee (p. 119)

In *Sands v. Carruthers*, (S. D. N. Y. 1917) 243 Fed. 636, it was held that where an alien assigned to a citizen a chose in action against another alien, the fact of alienage of the assignor did not bar the federal court of jurisdiction by removal of suit by his citizen administrators, as if the assignor's citizen administrators had sued the court would have had jurisdiction.

In *Patterson v. Bucknell*, (S. D. N. Y. 1913) 203 Fed. 1021, the plaintiff sued as assignee of ten separate causes of action, the assignors in some instances being citizens of the United States, and in others aliens, and defendant was an alien corporation. The defendant removed the suit and the plaintiff's motion to remand was denied.

XI. SEPARABLE CONTROVERSY AS GROUND OF REMOVAL

3. Tests of Separability

a. In General (p. 123)

Character of relief sought.—On a bill in equity by a receiver of a corporation against its directors, under a statute imposing a joint liability upon all the defendants charged jointly in the bill as tortfeasors, with a prayer for a money decree against all, there was no separable controversy, as the relief sought could not be afforded in a suit against any one of defendants alone. *Holcombe v. Ames*, (1917) 87 N. J. Eq. 486, 100 Atl. 609.

11. Separate Defenses

b. Actions Ex Contractu (p. 133)

In an action on a contract separate defenses do not raise separable controversies. *Seattle v. Beer's Bldg. Co.*, (W. D. Wash. 1917) 242 Fed. 988.

16. Separable Controversy, How Shown (p. 138)

"In deciding whether or not a separable controversy exists between the plaintiff and the defendant claiming the right to remove, the cause of action alleged in the plaintiff's pleading must be accepted as the only criterion of the decision, and if it is there alleged that the cause of action is joint, and if it appears that some of the defendants are citizens of the same state with the plaintiff, it must be held that the suit is not removable." *Holcombe v. Ames*, (1917) 87 N. J. Eq. 486, 100 Atl. 609, *following National Docks, etc., Connecting R. Co. v. Pennsylvania R. Co.*, (1893) 52 N. J. Eq. 58, 28 Atl. 71, *affirmed* 52 N. J. Eq. 590, 30 Atl. 50.

34. *Miscellaneous Equity Suits* (p. 148)

No separable controversy.—In a suit in equity against several defendants to recover property held by several of them and alleged to have been obtained by the fraud and conspiracy of some of the defendants, one of the defendants so charged cannot have a separable controversy with the plaintiff. *O'Neil v. Birdseye*, (S. D. N. Y. 1917) 244 Fed. 254, the court holding that the case could not be distinguished from *Baillie v. Backus*, (D. C. Ore. 1916) 230 Fed. 711, "where it was held that one conspirator alone could not remove claiming a separable controversy."

In a suit by a receiver of a railroad company against a nonresident railroad company and resident individuals to enjoin them from carrying out an alleged conspiracy to injure the plaintiff's company by violating a certain contract as to routing of traffic, it was held that there was no separable controversy with the defendant railroad company, as the action was brought essentially in tort against all the defendants as wrongdoers. *Smith v. Barnett*, (W. D. N. Y. 1917) 242 Fed. 83.

Where a state statute prohibited directors of a corporation from paying dividends except upon the surplus or from the net profits arising from the business of the corporation, and imposed a joint and several liability upon them for any willful or negligent violation, which in case of insolvency was enforceable by the receiver to the full amount of any loss sustained by the corporation by reason of such division, and such receiver filed a bill against former directors of a corporation, praying that the defendants "be decreed jointly and severally to pay the full amount of the said dividends," there was no separable controversy authorizing removal by one of the defendants. *Holcombe v. Ames*, (1917) 87 N. J. Eq. 486, 100 Atl. 609.

36. *Action of Tort Against Master and Servant* (p. 153)

Removal allowed.—In *Martin v. Matson Nav. Co.*, (W. D. Wash. 1917) 239 Fed. 188, it was held that a nonresident corporation was entitled to remove an action of tort brought against it and a resident servant for injuries suffered by another servant, the plaintiff's intestate, where the plaintiff's complaint showed that there was no joint liability between the servant defendant and the corporation defendant. It seems, however, that no cause of action was stated against the servant.

37. *Action of Tort Against Lessor and Lessee Railroad Company* (p. 159)

Where the plaintiff's pleading in an action against a resident lessor railroad

company and its nonresident lessee railroad company to recover for negligently killing plaintiff's intestate in the operation of the road, stated a cause of action against the lessor company, according to the decisions of the highest court of the state, the lessee railroad company had no removable separable controversy. *McAlister v. Chesapeake, etc., R. Co.*, (1917) 243 U. S. 302, 37 S. Ct. 274, 61 U. S. (L. ed.) 735.

41. *Action Against Principal and Surety* (p. 161)

An action on a bond of a contractor for public work brought by a municipal corporation against the resident contractor and a nonresident surety on the bond, to recover for breach of the bond, was not removable by the surety on the alleged ground of a separable controversy. *Seattle v. Beer's Bldg. Co.*, (W. D. Wash. 1917) 242 Fed. 988.

XIII. WHO MAY REMOVE A SUIT

2. *Only a Defendant* (p. 186)

Defendant becoming a plaintiff in a cross complaint.—In *Hansen v. Pacific Coast Asphalt Cement Co.*, (S. D. Cal. 1917) 243 Fed. 283, granting a motion to remand a removed case, the court said: "This action was commenced in the superior court of the state of California, in and for the county of Santa Barbara, and the proceedings therein progressed until a decree was entered June 26, 1916. Thereafter defendant applied, under section 473 of the Code of Civil Procedure, for leave to answer; the application having been made within a year after the rendition of said decree. The court made an order on February 7, 1917, allowing the defendant to answer within 10 days from that date. On February 13, 1917, the defendant filed a petition and bond to remove the cause to this court. On the same date, to wit, February 13, 1917, defendant filed an answer and cross-complaint, seeking a personal judgment against the plaintiff. The record presented to this court shows that the answer and cross-complaint appear in the record following the petition and bond for removal. The court cannot assume from this fact that the cross-complaint was filed subsequent to the petition for removal. The parties have discussed the case as though it were filed subsequent to filing the petition and bond. It does not seem to make any difference whether it was filed contemporaneous with the petition and bond or subsequently. It would seem, however, that the court should consider that all three of the papers were filed at the same time. Only the defendant has a right to remove a case from a state court to this court. Judicial Code, § 28. The question presented upon this motion to re-

mand is whether or not the case was removed here by a defendant. The only difference between a counterclaim and a cross-complaint, so far as the record here is concerned, in the California practice, is that, in a cross-complaint filed by a defendant, the plaintiff is required to answer. No answer is necessary to a counterclaim. C. C. P. §§ 437, 438, 442, 626, 666. There is a conflict of authority concerning the right of removal by plaintiff, where defendant files a cross-bill or counterclaim. . . . Some of the cases which deny the right of a plaintiff to remove assign as the reason that the plaintiff invoked jurisdiction of the court, knowing that a counterclaim or cross-bill might be filed. These cases are distinguished, where it is said that, if the federal court did not have jurisdiction of the cause of action which the plaintiff filed, the principle just stated did not apply, and therefore that the plaintiff could remove the case, where the cross-complaint was such as to give the federal court jurisdiction, because he had become a defendant. *Price & Hart v. Ellis* (C. C.) 129 Fed. 482; *Hagerla v. Miss. River Power Co.* (D. C.) 202 Fed. 771. The principle involved in these cases is the same principle involved in this case. A cross-complaint is the assertion of a new and different cause of action from that asserted in the complaint. The defendant becomes a plaintiff to all intents and purposes by filing a cross-complaint. When the action is removed, it carries the whole record. That would bring with it the action which the defendant instituted, and, if he is allowed to remove under such circumstances, it would be allowing the plaintiff to remove an action, instead of limiting the right of removal to a defendant. By filing this cross-complaint, the defendant became a plaintiff, and invoked the jurisdiction of the court, and thereby deprived itself of the right to remove. *Texas & Pacific Ry. v. Eastin*, 214 U. S. 153, 29 Sup. Ct. 564, 53 L. Ed. 946. The defendant claims he was compelled to file cross-complaint in order to preserve his rights. That, however, is not true, because the defendant could have removed the case without filing any pleading at all in the state court."

3. Only a Nonresident Defendant

b. Suit by or Against Alien (p. 206)

Removal by defendant alien.—In *Beat v. Great Northern R. Co.*, (D. C. Mont. 1917) 243 Fed. 789, the court denied a motion to remand a joint suit for tort removed from a Montana court by defendants, one a foreign corporation, the other a citizen of Italy resident in Montana, as an alien must be assumed not to reside in the United States.

5. For Diverse Citizenship Alone

c. Joinder in Petition for Removal (p. 208)

One of several necessary defendants cannot alone remove the cause, where there is no separable controversy. *O'Neil v. Birdseye*, (S. D. N. Y. 1917) 244 Fed. 254.

XVI. ORDER OF REMAND NOT REVIEWABLE

2. Indirect Review Forbidden

a. In General (p. 233)

"This court has more than once held that such an order is not subject to review, directly or indirectly, but is final and conclusive. *Missouri Pac. R. Co. v. Fitzgerald*, 160 U. S. 556, 580-583, 16 S. Ct. 389, 40 U. S. (L. ed.) 536, 542, 543; *McLaughlin Bros. v. Hallowell*, 228 U. S. 278, 286, 33 S. Ct. 465, 57 U. S. (L. ed.) 835, 839; *Pacific Live Stock Co. v. Lewis*, 241 U. S. 440, 447, 36 S. Ct. 637, 60 U. S. (L. ed.) 1084." *Yankaus v. Feltenstein*, (1917) 244 U. S. 127, 37 S. Ct. 567, 61 U. S. (L. ed.) 1036.

d. On Writ of Error to State Court (p. 234)

In *Yankaus v. Feltenstein*, (1917) 244 U. S. 127, 37 S. Ct. 567, 61 U. S. (L. ed.) 1036, a petition and bond for removal were filed in the state court, after notice, and the bond was approved by the judge of the state court. The record was then filed in the federal court. The state court afterward rendered judgment for the plaintiff. The federal court, on proper notice and motion to remand, then entered an order restraining the plaintiff from proceeding further to enforce said judgment, until the question of jurisdiction could be decided on the motion to remand, and subsequently it entered an order remanding the case. The defendant then moved in the state court to set aside the judgment rendered by it while the cause was pending in the federal court, and his said motion was denied; and the judgment and the decision on the motion were affirmed by the appellate state court. On writ of error from the United States Supreme Court the judgment of the state court was affirmed, it being held that the effect of the orders of the federal court was to hold that the attempted removal was unauthorized, and that this holding was final and conclusive.

Vol. V, p. 235, Jud. Code, sec. 29.

II. Time for filing petition and bond.

6. "Rule of the state court."
7. Time to plead in various states.
10. Extension of time by order or stipulation.

- 23. After nonremovable case becomes removable.
 - a. In general.
 - f. Disclaimer, discontinuance, nonsuit, etc., showing diversity of citizenship or fraudulent joinder.
 - ff. Failure of proof of alleged federal question.
- III. Notice of petition and bond prior to filing.
 - 2. Under Judicial Code.
 - c. Sufficiency of notice.
 - e. Reported forms of notice.
- IV. Petition for removal.
 - 10. Averments as to citizenship.
 - a. Individuals.
 - f. Corporation.
 - 13. Averments of fraudulent joinder.
 - b. Sufficient allegations.
 - c. Insufficient allegations.
 - 22. Verification under Judicial Code.
 - b. Sufficiency.
 - 23. Reported forms of petitions.
 - h. Averments as to fraudulent joinder.
- V. Bond for removal.
 - 7. Validity of execution.
 - 9. Qualification, justification and sufficiency.
- VI. Felony and presentation of petition and bond.
 - 3. Filing with clerk of court.
- VII. State court's loss of jurisdiction.
 - 1. By filing of sufficient petition and bond.
 - 5. Validity of further proceedings.
 - h. Effect of adjudication of federal jurisdiction by federal court.
- IX. Jurisdiction acquired by federal control.
 - 3. By filing certified copy of record.
 - b. Failure to file or delay in filing.
 - 4. Injunction against further proceedings in state court.
 - a. In general.
 - b. When injunction denied.

II. TIME FOR FILING PETITION AND BOND

6. "Rule of the State Court" (p. 240)

"This term 'rule of court' appearing in the statute has reference to a standing rule having the force of law. *Meeke v. Mineral Co.*, 122 N. C. 790-797, 29 S. E. 781; *Fox v. R. Co.*, 80 Fed. 945." *Dills v. Champion Fiber Co.*, (N. C. 1917) 94 S. E. 694.

"The reference in the federal statute to the rule of the state court in which suit is brought to answer or plead clearly relates, not to special orders granted upon application or stipulations of parties in

any given case, but rather to a general rule fixing the date at which all defendants are required to appear in order to avoid being held in default." *Wilson v. Big Joe Block Coal Co.*, (1907) 135 Ia. 531, 113 N. W. 348, 14 Ann. Cas. 266, followed in a case removed from an Iowa court in *Waverly Stone, etc., Co. v. Waterloo, etc., R. Co.*, (N. D. Ia. 1917) 239 Fed. 561.

7. Time to Plead in Various States (p. 241)

In Ohio.—See *Bedell v. Baltimore, etc., R. Co.*, (N. D. Ohio 1917) 245 Fed. 788, holding that defendant's petition for removal was filed in time under the Ohio law.

10. Extension of Time by Order or Stipulation (p. 242)

Order of court.—A petition for removal is filed too late where the statutory time for the defendant to answer or otherwise plead has expired, though within the time extended by a local rule of the state court in which the cause is pending, especially where the highest court of the state has decided that the statute authorizing the court to extend the time to plead does not have the effect to extend the time for removal. *Waverly Stone, etc., Co. v. Waterloo, etc., R. Co.*, (N. D. Ia. 1917) 239 Fed. 561, granting a motion to remand.

Stipulation of parties.—"A defendant is not required by law to plead until the time fixed by order, if the time be extended by order of court, or until the time fixed by stipulation, if the other party sees fit to stipulate in writing that he need not answer or plead until a fixed day. The New York courts and rules recognize stipulations of this character, and in the absence of fraud or mistake hold the parties to them bound thereby. This court has so decided. *Groton, etc., Co. v. Am. B. Co.*, 137 Fed. 284. And see *Russell v. Harriman Land Co.*, 145 Fed. 745. . . . There are a few cases to the contrary which seem to be based upon the proposition that parties by stipulation cannot extend the time within which removal is to be made." *Hinman v. Barrett*, (N. D. N. Y. 1917) 244 Fed. 621, per Ray, J.

In *Solomon v. Pennsylvania R. Co.*, (E. D. N. Y. 1917) 240 Fed. 231, the plaintiff gave the defendant a written stipulation extending the time "to answer, plead or make any motion." On the next day after expiration of the extended time, the plaintiff stipulated that the defendant should have 20 days' further time to "answer," but struck out the words "demur or otherwise plead." "On such a stipulation, even if we assumed the

default was opened thereby, the power to remove was lost," said the court, granting a motion to remand where the cause was removed on a petition subsequently filed.

23. After Nonremovable Case Becomes Removable

a. In General (p. 254)

"That a case not removable when commenced may afterwards become removable is settled by *Ayres v. Watson*, 113 U. S. 594; *Martin v. Baltimore, etc., R. Co.*, 161 U. S. 673, 688, 691; *Powers v. Chesapeake, etc., R. Co.*, 169 U. S. 92, and *Fritzlen v. Boatmen's Bank*, 212 U. S. 364." *Great Northern R. Co. v. Alexander*, (1918) 246 U. S. 276, 38 S. Ct. 237, 62 U. S. (L. ed.) 713.

f. Disclaimer, Discontinuance, Nonsuit, etc., Showing Diversity of Citizenship or Fraudulent Joinder (p. 258)

"The obvious principle of these decisions" set forth under this head in vol. 5, p. 258, holding that a case had not become removable, was applied in *Great Northern R. Co. v. Alexander*, (1918) 246 U. S. 276, 38 S. Ct. 237, 62 U. S. (L. ed.) 713.

ff. Failure of Proof of Alleged Federal Question (p. 259)

A case arising under the laws of the United States and between citizens of different states but nonremovable on the complaint, because arising under the federal Employers' Liability Act, "cannot be converted into a removable one by evidence of the defendant or by an order of the court upon any issue tried upon the merits," and "such conversion can only be accomplished by the voluntary amendment of his pleadings by the plaintiff." *Great Northern R. Co. v. Alexander*, (1918) 246 U. S. 276, 38 S. Ct. 237, 62 U. S. (L. ed.) 713.

In *Great Northern R. Co. v. Alexander*, (1918) 246 U. S. 276, 38 S. Ct. 237, 62 U. S. (L. ed.) 713, cited in the last preceding paragraph, the action as shown in the plaintiff's complaint was based on the federal Employers' Liability Act, and was therefore at its commencement nonremovable, by force of the proviso to Judicial Code, § 28, vol. 5, p. 16, although the parties were of diverse citizenship, and the court held that it did not become removable after the plaintiff had rested his case upon defendant's contention that the proof showed that the case was intra-state and therefore removable for diverse citizenship, where the plaintiff did not at any time admit that he had failed to prove the allegation that the cause of action arose under the federal Employers'

Liability Act, and did not amend his complaint, but contended at every stage of the case that his allegation was supported by the evidence.

III. NOTICE OF PETITION AND BOND PRIOR TO FILING

2. Under Judicial Code

c. Sufficiency of Notice (p. 272)

"A notice of intention to file a petition and bond for removal of a cause is sufficient though it does not specify the time and place when it is to be presented. *Potter v. General Baking Co.*, 213 Fed. 697." *Hinman v. Barrett*, (N. D. N. Y. 1917) 244 Fed. 621.

e. Reported Forms of Notice (p. 273)

The notice served in *Hinman v. Barrett*, (N. D. N. Y. 1917) 244 Fed. 621, and held sufficient, is there set forth in full.

IV. PETITION FOR REMOVAL

10. Averments as to Citizenship

a. Individuals (p. 282)

An averment of residence is not the equivalent of an averment of citizenship. *Hinman v. Barrett*, (N. D. N. Y. 1917) 244 Fed. 621.

f. Corporation (p. 286)

An averment that a corporation is a citizen of a particular state is insufficient. *Fentress Coal, etc., Co. v. Elmore*, (C. C. A. 6th Cir. 1917) 240 Fed. 328, 153 C. C. A. 254, where in an action begun in a Tennessee court, the removal petition by the defendant corporation alleged that both at the time of commencing suit and filing of removal petition, the plaintiff was a citizen of Tennessee, and the defendant was a citizen of the state of Pennsylvania and of no other state, residing in the city of Philadelphia, in said state. The Circuit Court of Appeals held that the allegation was insufficient, and reversed a judgment for the plaintiff, but with leave to the plaintiff to amend his declaration in the court below so as to show that the defendant was organized under the laws of Pennsylvania.

13. Averments of Fraudulent Joinder

b. Sufficient Allegations (p. 293)

In *Seattle v. Great Northern R. Co.*, (W. D. Wash. 1913) 239 Fed. 1009, the *Seattle & Montana Railway Company*, a Washington corporation, was joined as a defendant in an action against a foreign corporation to which it had conveyed its property and franchises to recover damages for alleged negligent construction and operation of a tunnel. The petition for removal by the foreign corporation al-

leged that the Washington corporation was fraudulently joined to prevent removal and continued: "that said plaintiff had not at the time of the commencement of this action, and has not since had, and has not now, any reason whatever to believe, or any reasonable grounds of establishing any facts connecting the Seattle & Montana Railroad Company with the cause of action herein, and has not now, or has it had, any reasonable grounds to believe that a cause of action against said Seattle & Montana Railroad Company exists now, or existed at the time of the commencement of this action arising out of the facts set forth in said complaint." Upon consideration of affidavits filed in support of the foregoing allegation, the court held that the alleged fraudulent joinder was proved, and a motion to remand was denied.

c. Insufficient Allegations (p. 296)

"The right of removal may not be defeated by a fraudulent joinder of a defendant having no real connection with the controversy; but the defendant seeking removal must allege facts that force the conclusion that the joinder is fraudulent, unless it is apparent upon the face of the complaint and merely to apply the term 'fraudulent' will not suffice . . . For the purposes of removal the issue tendered is what the plaintiff makes it in his complaint." *Martin v. Matson Nav. Co.*, (W. D. Wash. 1917) 239 Fed. 188.

In a petition for removal by a nonresident lessee railroad company of an action of tort against said company and its resident lessor, an allegation that the said lessor company was "wrongfully, fraudulently and falsely" made a party for the sole purpose of preventing removal to the federal court, without any intention on the part of the plaintiff of proving against it any of the tortious acts alleged by the plaintiff, was on its face insufficient under the decisions of the Federal Supreme Court. *McAllister v. Chewnpeake, etc., R. Co.*, (1917) 243 U. S. 302, 37 S. Ct. 274, 61 U. S. (L. ed.) 735.

22. Verification Under Judicial Code

b. Sufficiency (p. 309)

Where a suit by a postmaster against a post office inspector was removable as arising under the postal laws, and a petition for removal was verified by one signing his name as "United States Attorney" and "attorney for petitioner" the verification was sufficient, as it was possible that the words "United States Attorney" were descriptio personæ. *Porter v. Coble*, (C. C. A. 8th Cir. 1917) 246 Fed. 244, 158 C. C. A. 404, where it seems also that the objection was first made in the Appellate Court.

23. Reported Forms of Petitions

h. Averments as to Fraudulent Joinder (p. 314)

See quotation from the petition for removal in *Seattle v. Great Northern R. Co.*, (W. D. Wash. 1913) 230 Fed. 1009, as given *supra*, at p. 1105.

V. BOND FOR REMOVAL

7. Validity of Execution (p. 322)

Execution by foreign surety company.—Where a bond was signed by the president of the petitioning defendant corporation, and by a surety company by its agent and attorney in fact, with the surety company's corporate seal attached it was "amply sufficient to authorize the state judge to accept the same, unless something was brought to his attention questioning the validity of said bond." *Brady v. J. B. McCrary Co.*, (S. D. Fla. 1917) 244 Fed. 602, where the court denying a motion to remand, overruled objection that the bond was insufficient on its face, because it was "executed by a foreign corporation in a foreign jurisdiction with a foreign surety company, and it is not made to appear that the seals affixed have been authorized."

9. Qualification, Justification, and Sufficiency (p. 324)

Foreign surety company—number of sureties.—In *Brady v. J. B. McCrary Co.*, (S. D. Fla. 1917) 244 Fed. 602, denying a motion to remand upon the contention that it did not appear that the surety on the bond, which was a foreign surety company, was authorized to do business in Florida, where the removal was had, the court said: "The foreign corporation act of Florida has been construed by the state Supreme Court as making the contracts voidable and not void, and such act has been amended by the legislature at its session in 1915. But in any event by the terms of the act the foreign corporation not complying with the act can take no advantage of such noncompliance, but is bound by its contracts. Section 29 of the Judicial Code requires 'surety,' not 'sureties.'"

VI. FILING AND PRESENTATION OF PETITION AND BOND

3. Filing with Clerk of Court (p. 327)

"The section requires that the petition and sufficient bond be filed, and it is settled law that the clerk is the custodian of the records of the court, and a lodging with him for such purpose is a filing, whether he sees fit to place his file mark thereon or not." *Brady v. J. B. McCrary Co.*, (S. D. Fla. 1917) 244 Fed. 602.

VII. STATE COURT'S LOSS OF JURISDICTION

1. By Filing of Sufficient Petition and Bond (p. 356)

"The filing of a duly verified petition for removal, stating the necessary facts, together with a good and sufficient bond, conditioned as required by the section, with written notice to the plaintiff that the same would be filed, automatically removed said cause to the United States court. . . . It is too well settled by authority to need citation that even the refusal of the state court to grant the petition in a proper case made is of no moment." *Brady v. J. B. McCrary Co.*, (S. D. Fla. 1917) 244 Fed. 602.

5. Validity of Further Proceedings

h. Effect of Adjudication of Federal Jurisdiction by Federal Court (p. 361)

A restraining order issued by the federal court forbidding enforcement of a judgment rendered by the state court, where the memorandum opinion accompanying the order showed that its purpose was merely to prevent proceedings until a motion to remand could be heard and decided, was not an adjudication that the federal court had jurisdiction; and the motion to remand being subsequently granted, the validity of the said judgment of the state court was not assailable on writ of error by the United States Supreme Court. *Yankaus v. Feltenstein*, (1917) 244 U. S. 127, 37 S. Ct. 567, 61 U. S. (L. ed.) 1036.

IX. JURISDICTION ACQUIRED BY FEDERAL COURT

3. By Filing Certified Copy of Record

b. Failure to File or Delay in Filing (p. 366)

Motion to remand—A case was remanded where a copy of the record was not filed in the federal court until more than three months after the expiration of the thirty days prescribed in Judicial Code, sec. 29, and no excuse for the delay was shown. *Waverly Stone, etc., Co. v. Waterloo, etc., R. Co.*, (N. D. Ia. 1917) 239 Fed. 561, the court saying: "The plaintiff has not moved to remand the cause upon the ground above considered; but the court may and should remand the cause upon its own motion, if the case, though a removable one, is not properly removed. *Crehore v. Ohio, etc., R. Co.*, 131 U. S. 9, S. Ct. 92, 33 U. S. (L. ed.) 144; *Burnham v. First Nat. Bank*, 53 Fed. 163-167, 3 C. C. A. 486; *Barth v. Coler*, 60 Fed. 466, 9 C. C. A. 81."

4. Injunction Against Further Proceedings in State Court

a. In General (p. 372)

Power to grant injunction—ancillary bill for injunction.—"If a cause is properly removed from a state to a federal court, the latter may, when it is necessary to do so, issue an injunction to restrain further proceedings in the state court, if such court should persist in proceeding." This it may do in an ancillary suit for injunction for the purpose of protecting its own jurisdiction, and in such suit, the court having denied a motion to remand, the jurisdiction acquired by the removal cannot be questioned or re-examined, and the court "can only consider the question of jurisdiction of the ancillary suit so far as to ascertain whether the ancillary character of the suit is made to appear by the allegations of the bill." *McCabe v. Guaranty Trust Co.*, (C. C. A. 2d Cir. 1917) 243 Fed. 845, 156 C. C. A. 357.

b. When Injunction Denied (p. 373)

Since a decree in equity is to be shaped as the rights of the parties exist at the time of the decree, and where the answer to an ancillary bill for injunction against further proceedings in the state court in a removed case admitted the intention of the defendant to proceed in the state court if the latter should decide that the case was not removable, but said court afterward but before decree on the ancillary bill, granted the removal, the federal court properly refused to grant the injunction and its dismissal of the bill without prejudice was affirmed. *McCabe v. Guaranty Trust Co.*, (C. C. A. 2d Cir. 1917) 243 Fed. 845, 156 C. C. A. 357.

Vol. V, p. 398, Jud. Code, sec. 37.

I. Dismissal of suit.

3. Parties improperly or collusively made or joined.

a. In general.

II. Grounds for remand.

1. Want of jurisdiction, in general.

2. Suit not within original federal jurisdiction in the particular district.

5. Where jurisdiction is doubtful.

6. Elimination of ground of removal.

b. Reduction of amount in controversy.

7. Delay in filing transcript.

III. Waiver or amendment of defects.

1. Waiver of objection.

2. Amendment of record in general.

3. Amendment of petition for removal.

b. As to citizenship.

IV. Issues of fact in removed cases.

5. For want of jurisdictional amount in controversy.

8. Fraudulent joinder to prevent removal.
- d. Sufficiency of evidence.
- V. Procedure for remand.
 1. Remand on court's own motion.
 - b. For mere irregularities.
12. Reconsideration of order denying remand.
16. Costs on remand.

I. DISMISSAL OF SUIT

3. Parties Improperly or Collusively Made or Joined

a. In General (p. 401)

Friendly suit.—In *Stephens v. Ohio State Telephone Co.*, (N. D. Ohio 1917) 240 Fed. 759, where it was contended that jurisdiction of certain suits was lacking because they were collusive, the court said: "In argument it is urged with considerable insistence that the court has before it a case squarely within the provisions of sections 19 and 20, and particularly the latter, of the act of October 15, 1914. There is no evidence of collusion between the parties in this case; that the original parties may be friendly antagonists is not, however, improbable. Counsel's surmise may be correct, but something more than this is necessary to make their 'collusion' reprehensible."

II. GROUNDS FOR REMAND

1. Want of Jurisdiction, in General (p. 407)

Petition for removal not filed in time.—Where a motion to remand was made on the sole ground that there was no removable separable controversy, the court found it unnecessary to consider that ground, but remanded the case because the petition for removal was not filed in time. *Waverly Stone, etc., Co. v. Waterloo, etc., R. Co.*, (N. D. Ia. 1917) 239 Fed. 561.

2. Suit Not Within Original Federal Jurisdiction in the Particular District (p. 408)

Both plaintiff and defendant nonresidents.—Where the plaintiff in a suit in a New York court was a citizen of Pennsylvania and the defendant a citizen of New Jersey, the cause was remanded on motion of the plaintiff after its removal to the federal court in New York. *O'Neil v. Birdseye*, (S. D. N. Y. 1917) 244 Fed. 254, where the court said: "Neither the plaintiff nor the removing defendant reside within this district, and under the rule laid down in *Doherty v. Smith* (D. C.) 233 Fed. 132, this court is committed to the rule of law that a motion to remand should be granted because of the

nonresidence within this district of the plaintiff or defendant. Judge Hand, in the authority above cited, reviewed the authorities with considerable care, and I cannot find that the rule laid down in the case of *Doherty v. Smith* has been departed from in this district."

5. Where Jurisdiction Is Doubtful (p. 411)

"It is the duty of the court, where doubt exists is to jurisdiction to remand the cause to the state court." *Harley v. Firemen's Fund Ins. Co.*, (W. D. Wash. 1913) 245 Fed. 471.

If jurisdiction of the federal court is doubtful, the cause "should for that reason alone be remanded." *Ostrom v. Edison*, (D. C. N. J. 1917) 244 Fed. 228, citing the following cases: *Fitzgerald v. Missouri Pac. R. Co.*, (C. C. Neb. 1891) 45 Fed. 812; *Fishblatt v. Atlantic City*, (C. C. N. J. 1909) 174 Fed. 196; *Shawnee Nat. Bank v. Missouri, etc., R. Co.*, (E. D. Okla. 1909) 175 Fed. 456; *Odhner v. Northern Pac. R. Co.*, (S. D. N. Y. 1910) 188 Fed. 507, 508; *Jackson v. Hooper*, (S. D. N. Y. 1911) 188 Fed. 509; *Western Union Tel. Co. v. Louisville, etc., R. Co.*, (E. D. Tenn. 1912) 201 Fed. 932, 945; *Eddy v. Chicago, etc., R. Co.*, (W. D. Wis. 1915) 226 Fed. 120, 125.

"It is the duty of the court to remand, where there is doubt as to whether the case has been properly removed." *Haneet v. Pacific Coast Asphalt Cement Co.*, (S. D. Cal. 1917) 243 Fed. 283, holding that a defendant who filed an answer and cross complaint seeking a personal judgment against the plaintiff thereby debarred himself from exercising the right as a "defendant" to remove the case. Duty to remand where a doubt exists was also affirmed in *State v. Puget Sound Traction, etc., Co.*, (W. D. Wash. 1917) 243 Fed. 748.

"In case of doubt it has always been the practice of this circuit to remand." *Orr v. Baltimore, etc., R. Co.*, (S. D. N. Y. 1914) 242 Fed. 608.

In the Eighth Circuit the rule is stated to be that if on a motion to remand the question of federal jurisdiction is doubtful the jurisdiction should be retained and the motion denied. *Strother v. Union Pac. R. Co.*, (W. D. Mo. 1915) 220 Fed. 731, citing *Boatmen's Bank v. Fritzlen*, (C. C. A. 8th Cir. 1905) 135 Fed. 650, 68 C. C. A. 288.

In *re Mississippi River Power Co.*, (S. D. Ia. 1917) 241 Fed. 194, denying a motion to remand based on the contention that the proceeding removed was not a "suit," the court said: "Were the question doubtful, it would be my duty to resolve the doubt against the motion to remand, because from such order an appeal will lie, while from an order re-

manding the case the parties have no right of appeal."

6. Elimination of ground of removal

b. Reduction of Amount in Controversy (p. 413)

In *Jellison v. Krell Piano Co.*, (E. D. Ky. 1917) 246 Fed. 509, a suit for the recovery of \$2,900 for services and to enjoin violation of a copyright was removed for diversity of citizenship on a petition alleging that the matter in dispute exceeded \$3,000. In the federal court the action for injunction was dismissed on plaintiff's motion, leaving a suit to recover only \$2,900. Upon such dismissal and because the suit as it then stood could not have been removed, a motion to remand was made. Upon much consideration the motion was denied, the court following *Kirby v. American Soda Fountain Co.*, (1904) 194 U. S. 141, 24 S. Ct. 619, 48 U. S. (L. ed.) 911, and the following two cases in the Circuit Court of Appeals for the same circuit: *Riggs v. Clark*, (C. C. A. 6th Cir. 1896) 71 Fed. 560, 18 C. C. A. 242; *Hayward v. Nordberg Mfg. Co.*, (C. C. A. 6th Cir. 1898) 85 Fed. 4, 29 C. C. A. 438; although the court found it "difficult to reconcile the Soda Fountain Case with the Seeligson and Torrence Cases," the latter two cases being *Texas Transp. Co. v. Seeligson*, (1887) 122 U. S. 519, 7 S. Ct. 1261, 30 U. S. (L. ed.) 1150, and *Torrence v. Shedd*, (1892) 144 U. S. 527, 12 S. Ct. 726, 36 U. S. (L. ed.) 528.

7. Delay in Filing Transcript (p. 413)

In *Waverly Stone, etc., Co. v. Waterloo, etc., R. Co.*, (N. D. Ia. 1917) 239 Fed. 561, the court remanded a cause partly because a copy of the record was not filed until after a delay of more than three months, no excuse for the delay being shown, although the plaintiff's motion to remand was based solely upon the ground that there was no separable controversy.

III. WAIVER OR AMENDMENT OF DEFECTS

1. Waiver of Objection (p. 414)

Where the plaintiff in an action in a New York court against a New Jersey corporation did not allege his citizenship or residence, and the defendant appeared and answered generally and removed the case upon a petition alleging that the plaintiff was a citizen of New York, it had no right to object to being sued in that district when it developed on the trial that the plaintiff was an alien. *Sawickas v. Singer Mfg. Co.*, (E. D. N. Y. 1917) 241 Fed. 600.

2. Amendment of Record in General (p. 416)

To show citizenship of corporation.—In *Fentress Coal, etc., Co. v. Elmore*, (C.

C. A. 6th Cir. 1917) 240 Fed. 328, 153 C. C. A. 254, where a case was removed on a petition insufficient because it alleged that the corporation defendant was a citizen of a state without alleging that it was organized under the laws of that state, a judgment for the plaintiff was reversed, but with leave to amend his declaration, and thus support the judgment, by amending his declaration so as to make a proper allegation of defendant's citizenship. The court said: "The defect in the record is capable of being cured by amendment, in spite of the fact that the case came into the court below by removal from a state court. *La Belle Co. v. Stricklin*, (C. C. A. 6th Cir.) 218 Fed. 529, 533, 534, 134 C. C. A. 257; *Rife v. Lumber Underwriters*, (C. C. A. 6th Cir.) 204 Fed. 34, 36, 122 C. C. A. 346."

3. Amendment of Petition for Removal

b. As to Citizenship (p. 418)

An averment that a corporation is a citizen of a particular state, without alleging that it was organized under the laws of that state, is defective, but amendable. *Fentress Coal, etc., Co. v. Elmore*, (C. C. A. 6th Cir. 1917) 240 Fed. 328, 153 C. C. A. 254.

In *Hinman v. Barrett*, (N. D. N. Y. 1917) 244 Fed. 621, where an averment of residence was made in a petition for removal and conceded to be insufficient as an averment of citizenship, but the prayer for removal was expressed to be "on the ground of diversity of citizenship" of the parties named, application by the petitioner for removal to perfect the petition by amendment of the averment no motion to remand having been made, was granted by the court as in furtherance of justice. But the question whether such amendment would operate to effect a removal as of the date of the filing of the petition in the state court, and thus invalidate proceedings in the state court after that date, was expressly left open for the judge of the state court to determine on deciding a motion there pending to vacate a judgment by default entered after filing of the petition and bond.

Citizenship of plaintiff's assignor.—In *Brady v. J. B. McCrary Co.*, (S. D. Fla. 1917) 244 Fed. 602, the citizenship of plaintiff and defendant in a removed case was sufficiently alleged in the petition for removal, but, the action being on an assigned claim and the jurisdiction depending on the citizenship of the assignor, such citizenship was not alleged. After argument on a motion to remand, and before any ruling thereon could be made, the defendant filed a motion for leave to amend the petition by showing the citizenship of plaintiff's assignor, and the motion was granted and motion to remand denied.

IV. ISSUES OF FACT IN REMOVED CASES

5. *For Want of Jurisdictional Amount in Controversy* (p. 424)

Where a suit was brought to enjoin the defendant from exercising any jurisdiction over a certain waterway and to reform a lease of certain lands, and was removed on a petition alleging that the amount involved exceeded \$3,000, the allegation must be accepted on a motion to remand if no issue is taken on it otherwise than by contending that the rental value of the land as shown by the lease attached to the complaint was a sum much less than \$3,000. *Seattle v. Oregon, etc., R. Co.*, (W. D. Wash. 1917) 242 Fed. 986.

8. *Fraudulent Joinder to Prevent Removal*

d. Sufficiency of Evidence (p. 427)

Use of Affidavits—In *Seattle v. Great Northern R. Co.*, (W. D. Wash. 1913) 239 Fed. 1009, where a case was removed on a petition alleging fraudulent joinder of defendants, and there was a motion to remand denying the allegation, the removing defendant filed affidavits in support of its allegation, and no affidavits or proof controverting them were filed or offered. Formal objection was made to the consideration of the affidavits by the court, but the objection was overruled.

Grantee fraudulently joined with grantor—In *Seattle v. Great Northern R. Co.*, (W. D. Wash. 1913) 239 Fed. 1009, where the plaintiff city brought an action against a corporation of the same state and a foreign corporation to which the former had transferred all right in a certain railway and tunnel, to recover damages for negligent operation of the tunnel and for omitting to provide lateral support, whereby the plaintiff's property was injured, the federal court to which the cause was removed, upon consideration of affidavits filed by the defendant foreign corporation in support of its allegation that the resident corporation was fraudulently joined to prevent removal, found that the resident defendant's nonliability was known to the plaintiff prior to bringing the action and that it was fraudulently made a defendant; and a motion to remand was denied.

V. PROCEDURE FOR REMAND

1. *Remand on Court's Own Motion*b. *For Mere Irregularities* (p. 429)

In *Waverly Stone, etc., Co. v. Waterloo, etc., R. Co.*, (N. D. Ia. 1917) 239 Fed. 561, the court remanded a case because the petition for removal was not filed in time, and the copy of the record was not entered in the federal court in time, al-

though the motion to remand was based solely upon the ground that there was no federal question.

12. *Reconsideration of Order Denying Remand* (p. 434)

Motion to remand denied by another judge—Granting a motion to remand for want of a jurisdictional amount in controversy, although another judge of the court had denied such motion at an earlier stage of the case the court said: "That the court's jurisdiction is always open to challenge is supported by a long line of authorities, among which are *Gaugler v. Chicago, M. & P. S. Ry. Co.*, supra; *Barth v. Coler*, 60 Fed. 466, 9 C. C. A. 81; *New Chester Water Co. v. Holly Mfg. Co.*, 53 Fed. 19, 3 C. C. A. 399; *Plant v. Harrison* (C. C.) 101 Fed. 307; *Groel v. U. S. Elec. Co.* (C. C.) 132 Fed. 252; *Harrington v. Great Northern Ry. Co.* (C. C.) 169 Fed. 714." *Harley v. Firemen's Fund Ins. Co.*, (W. D. Wash. 1913) 245 Fed. 471.

16. *Costs on Remand* (p. 436)

Where a case was remanded because the petition for removal was not filed in time nor a copy of the record filed until after a delay of three months beyond the statutory period, with no excuse shown therefor, the remand was at the cost of the removing defendant, although the plaintiff's motion to remand was based solely on another ground not considered by the court. *Waverly Stone, etc., Co. v. Waterloo, etc., R. Co.*, (N. D. Ia. 1917) 239 Fed. 561.

Vol. V, p. 446, Jud. Code, sec. 38.

II. Validity of service of process in state court.

1. Effect of petition for removal as appearance.

b. Other cases.

4. Waiver of objection.

5. Service on foreign corporation.

III. Procedure after removal.

2. Legal and equitable remedies and defenses.

a. In general.

6. Miscellaneous proceedings.

II. VALIDITY OF SERVICE OF PROCESS IN STATE COURT

1. *Effect of Petition for Removal as Appearance*b. *Other Cases* (p. 456)

In *Beach v. Kerr Turbine Co.*, (N. D. Ohio 1917) 243 Fed. 706 where a defendant foreign corporation after removing an action at law to the federal court moved therein, upon affidavits, to set aside the summons as not having been served upon

its managing agent in the state, in compliance with the state statute, the court said: "It is proper to make this motion here after removal, and defects in the service may be taken advantage of by motion," citing *Cain v. Commercial Pub. Co.*, (1914) 232 U. S. 124, 34 S. Ct. 284, 58 U. S. (L. ed.) 534.

4. Waiver of Objection (p. 460)

In *Toledo Ry., etc., Co. v. Hill*, (1917) 244 U. S. 49, 37 S. Ct. 591, 61 U. S. (L. ed.) 982, reversing a judgment against a corporation and directing dismissal of the complaint for want of jurisdiction, the court said: "Averring themselves to be citizens of the United States, the one residing in the city of New York and the other in Boston, Massachusetts, the defendants in error in April, 1914, sued in the supreme court of the state of New York to recover from the plaintiff in error the principal and interest of certain bonds issued by the plaintiff in error, alleged to be a corporation created by the laws of Ohio. The summons was served upon a director and vice president of the corporation, residing in the city of New York. The corporation, appearing specially for that purpose, on the ground of diversity of citizenship, removed the cause to the district court of the United States for the southern district of New York, and, on the filing of the record in that court, again solely appearing for such purpose, moved to vacate the service of summons on the ground that the corporation was created by the laws of the state of Ohio, and was solely engaged in carrying on its business at Toledo in that state; that is, in the operation of street railways and the furnishing of electrical energy for light and other purposes. The motion to vacate expressly alleged that the corporation was prosecuting no business in the state of New York, and that the person upon whom the summons was served, although concededly an officer of the corporation, had no authority whatever to transact business for or represent the corporation in the state of New York. On the papers, affidavits and documents submitted, the motion to vacate was refused and an answer was subsequently filed by the corporation setting up various defenses to the merits and besides reasserting the challenge to the jurisdiction. At the trial, presided over by a different judge from the one who had heard and adversely disposed of the challenge to the jurisdiction, the court, treating the ruling on that subject as conclusive, declined therefore, to entertain the request of the corporation to consider the matter as urged in the answer. After this ruling the corporation refused to take part in the trial on the merits except to the extent that by way of objections to evi-

dence, requests for rulings and instructions to the jury, it restated and reurged its previous contention as to jurisdiction. There was a verdict and judgment for the plaintiffs, and this direct writ of error to review alone the ruling as to jurisdiction was prosecuted, the record containing the certificate of the trial judge, as required by the statute. Upon the theory that, as there was diversity of citizenship, the challenge to the jurisdiction involved merely authority over the person, it is insisted that even if the objection be conceded to have been well taken, it was subject to be waived and was waived below, and therefore is not open. This must be first disposed of. The contention rests upon the proposition that because, after the motion to vacate had been overruled, an answer to the merits was filed, therefore the right to assail the jurisdiction was waived. But this disregards the fact that the answer did not waive, but in terms reiterated, the plea to the jurisdiction. It further disregards the fact that the court treated the subject as not open for consideration because of the previous ruling on the motion to vacate. Moreover, as it has been settled that the right to review by direct writ of error a question of jurisdiction may not be availed of until after final judgment (*McLish v. Roff*, 141 U. S. 661, 35 L. ed. 893, 12 Sup. Ct. Rep. 118), it follows that the contention must be either that there is no right to review at all, or that it can only be enjoyed by waiving all defense as to the merits and submitting to an adverse judgment. The contention, however, has been conclusively adversely disposed of. *St. Louis Southwestern R. Co. v. Alexander*, 227 U. S. 218, 57 L. ed. 486, 33 Sup. Ct. Rep. 245, Ann. Cas. 1915B 77."

5. Service on Foreign Corporation (p. 460)

Sufficiency in general.—"A service in an action at law on a foreign corporation in conformity to a state statute is good in the federal courts, unless the notice thus provided is not adequate according to the rules of due process of law." *Beach v. Kerr Turbine Co.*, (N. D. Ohio 1917) 243 Fed. 706.

Service on sales agent.—In *American Oil, etc., Co. v. Western Gas Constr. Co.*, (C. C. A. 2d Cir. 1917) 239 Fed. 505, 152 C. C. A. 383, where an action at law in a New York court was removed to the federal court by the defendant Indiana corporation, and service of summons was there set aside, the order was affirmed, the court saying: "The contract is alleged to have been made in New York, but to be performed in Indiana; i. e., the defendant agreed to deliver to the plaintiff f. o. b. at Ft. Wayne, Ind., certain merchandise to be paid for in cash, which it subsequently

refused to deliver, although the plaintiff was ready then and there to pay for the goods. The person designated in 1907 under section 16 of the General Corporation Law (Consol. Law, c. 23) upon whom process may be served within the state having disappeared and the plaintiff finding no officer or director of the company within the state, served Steinmuller as a managing agent of the defendant in accordance with section 432, subd. 3, Code of Civil Procedure. Judge Augustus N. Hand found that the company had done business within the state, but that Steinmuller was only a sales agent, without discretionary powers, and acting throughout under the direction and control of the home office in Indiana. The facts that in 1915 he had made one contract, in the absence of proof that he was not then acting without specific directions, and that the New York City Directory since 1912 had described him as agent, were not sufficient to overcome the positive affidavits submitted by the defendant that it had no office, property, nor any agent within the state, except Steinmuller, a sales agent. We concur in this conclusion."

Who is "managing agent."—In *Beach v. Kerr Turbine Co.*, (N. D. Ohio 1917) 243 Fed. 706, the return of service in an action at law in the state court against a foreign corporation described the person served as "managing agent of said defendant company." The state statute provided: "When the defendant is a foreign corporation, having a managing agent in this state, the service may be upon such agent." It had been decided in a court of the state that this statute provided the only mode of obtaining service of summons on a foreign corporation. The federal court held that the service of summons was valid upon consideration of the facts in the case.

Doing business or not.—In *Toledo Rep., etc., Co. v. Hill*, (1917) 244 U. S. 49, 37 S. Ct. 591, 61 U. S. (L. ed.) 982, it was held, upon the facts there stated, that the foreign corporation defendant was not doing business in the state where the suit was brought, and service of process upon a director and vice president residing in that state was insufficient to confer jurisdiction over it.

Where, at the time when service of summons was made upon the general manager of defendant corporations, the latter were owners of several vessels engaged in transporting merchandise on the Great Lake, and operated a line of vessels carrying cargoes in interstate commerce to and from Buffalo, coming to Buffalo periodically during the season of navigation, where freights were collected by local agents, crews paid off, and vessels fitted out, repaired or laid up for the winter, as necessary, they were transacting business in New York state, although none of

the vessels happened to be in port at the time of serving the summons, and the service was valid. *Frontier Steamship Co. v. Franklin Steamship Co.*, (W. D. N. Y. 1916) 233 Fed. 127.

III. PROCEDURE AFTER REMOVAL

2. Legal and Equitable Remedies and Defenses

a. In General (p. 463)

Transfer of equity suit to law docket.—On motion of the defendant in a removed equity suit, it should be transferred to the law docket as required by Equity Rule 22 promulgated Nov. 4, 1912, where the bill shows that the suit is a mere action at law to recover a money judgment for breach of contract. *Edward Hines Lumber Co. v. Bowers*, (C. C. A. 5th Cir. 1917) 238 Fed. 782, 151 C. C. A. 632.

6. Miscellaneous Proceedings (p. 465)

Amendment by substitution of plaintiff.—In *Roman v. Lehigh Valley Coal Co.*, (E. D. N. Y. 1917) 241 Fed. 595, the plaintiff, a New York administrator sued a Pennsylvania corporation in a court of New York to recover under a Pennsylvania statute for the death of his decedent in that state. The defendant appeared generally and removed the action on the ground of diverse citizenship. In the federal court the defendant answered to the merits. It was held that he thereby waived objection to the maintenance of the action in that court, and precluded himself from objecting to the allowance of an amendment by substituting an alien plaintiff for the citizen administrator.

Vol. V, p. 468, Jud. Code, sec. 41.

For larceny of fish from a pound in the Atlantic Ocean more than three miles off the coast of New Jersey, where the accused were taken into custody while fishing with hook and line from a boat moored to the pound and were immediately brought ashore within the state, the federal District Court of New Jersey was the proper tribunal to try whatever offense had been committed. *Miller v. U. S.*, (C. C. A. 3d Cir. 1917) 242 Fed. 907, 155 C. C. A. 495, L. R. A. 1918A 545.

Vol. V, p. 475, Jud. Code, sec. 43.

Venue of an action by an informer to recover a penalty given by a federal statute is governed by this section and not by Judicial Code, § 51. *Tomkins v. Paterson*, (W. D. Wash. 1916) 238 Fed. 879.

Vol. V, p. 478, Jud. Code, sec. 48.

I. CONSTRUCTION AND SCOPE OF PROVISION

4. "Regular and Established Place of business" (p. 478)

Sufficiency of averment.—An allegation that defendant citizens and residents of Indiana "have jointly and severally infringed" the letters patent sued on "within the eastern district of Pennsylvania" and that all of the defendants "are now doing business under the name or style of Wall & Ochs at 1716 Chestnut street, in said city of Philadelphia" falls short of an allegation that the defendants "have a regular and established place of business" in that city. *Schenerle v. Onepiece Bifocal Lens Co.*, (E. D. Pa. 1917) 241 Fed. 270.

IV. SERVICE (p. 482)

A return of service was insufficient to give the court jurisdiction which averred service upon the defendants by serving certain named persons, without stating that they were agents engaged in conducting the business, and the bill did not allege them to be such. *Scheuerle v. Onepiece Bifocal Lens Co.*, (E. D. Pa. 1917) 241 Fed. 270.

Vol. V, p. 482, Jud. Code, sec. 50.

II. JURISDICTION (p. 483)

The words "found within the district" must have significance, inasmuch as they are retained in this section while omitted from Judicial Code, sec. 51; and the two sections, construed together "must mean that for the purposes of jurisdiction a single defendant must reside in the district in which the suit is brought, but where there are several defendants the court has jurisdiction of all if one or more are residents of the district and the others are found there." *Camp v. Gress*, (C. C. A. 4th Cir. 1917) 244 Fed. 121, 156 C. C. A. 549.

IV. PARTIES (p. 483)

One or more joint makers of a contract may be sued in the district of their residence when other joint makers cannot be brought into the action because of their residence in another district. *Camp v. Gress*, (C. C. A. 4th Cir. 1917) 244 Fed. 121, 156 C. C. A. 549, citing *Clearwater v. Meredith*, (1859) 21 How. 489, 16 U. S. (L. ed.) 201, and *Barney v. Baltimore City*, (1868) 6 Wall. 280, 18 U. S. (L. ed.) 825.

Vol. V, p. 486, Jud. Code, sec. 51.

III. Particular words and terms.

1. "Civil suit."

IV. Jurisdiction.

1. General matters.

V. Applicability.

2. Aliens and corporations of another country.

a. Generally.

4. Corporations.

b. Effect of doing business in state.

5. Action or proceeding and subject matter.

VI. Waiver.

2. Appearance and pleading to the merits.

b. General appearance.

III. PARTICULAR WORDS AND TERMS

1. "Civil Suit" (p. 489)

Contempt proceeding.—Upon examination of a proceeding for contempt for violation of an injunctive order, it was held in *Mitchell v. Dexter*, (C. C. A. 1st Cir. 1917) 244 Fed. 926, 157 C. C. A. 276, that the proceeding was civil in nature, and not distinguishable in that behalf from *Gompers v. Bucks Stove, etc., Co.*, (1911) 221 U. S. 418, 31 S. Ct. 492, 55 U. S. (L. ed.) 797, 34 L. R. A. (N. S.) 874, and that a federal District Court in Wisconsin had no authority to issue a writ directed to the marshal for the district of Massachusetts for the arrest of a person in the latter state and his removal to the Wisconsin district to answer for violation of an injunction.

IV. JURISDICTION

1. General Matters (p. 491)

Where there is only one defendant and the jurisdiction depends on diversity of citizenship alone, the suit must be brought in either the district of the residence of the defendant or of the plaintiff, and not in the district where the defendant is found. *Camp v. Gress*, (C. C. A. 4th Cir. 1917) 244 Fed. 121, 156 C. C. A. 549.

"Diversity of citizenship alone would not suffice where neither plaintiffs nor defendants were residents or citizens of the state of the forum. *In re Wisner*, 203 U. S. 449, 27 S. Ct. 150, 51 U. S. (L. ed.) 264; *Foult v. Gray*, 120 Fed. 156." *Albert v. Bascom*, (W. D. Tex. 1917) 245 Fed. 149.

V. APPLICABILITY

2. Aliens and Corporations of Another Country

a. Generally (p. 498)

"While citizens of states may sue in the state of the citizenship of either plaintiff

or defendant, aliens, though living in a state can sue only in the state of defendants' citizenship, and for the same reason a citizen may sue an alien wherever process can be served on him, though the alien lives, is resident, in another state than that of plaintiff or the court. So an alien, resident, in the sense of living, in Montana, cannot bring suit in this court [in Montana] against a citizen of Idaho, though a citizen of Montana, residing in Idaho, can, all because citizenship, not residence controls." *Best v. Great Northern R. Co.*, (D. C. Mont. 1917) 243 Fed. 789.

"An alien is without the language and purpose of section 51," and "he may be sued in any district in which he can be served with process." *Keating v. Pennsylvania Co.*, (N. D. Ohio 1917) 245 Fed. 155.

4. Corporations

b. Effect of Doing Business in State (p. 502)

What is or is not "doing business" in a state, see *Beach v. Kerr Turbine Co.*, (N. D. Ohio 1917) 243 Fed. 706, as cited in notes to vol V, p. 460, Judicial Code, § 38, *supra*, p. 1112.

5. Action or Proceeding and Subject Matter (p. 506)

Venue of an action by an informer to recover a penalty given by a federal statute is not governed by this section, but by Judicial Code, § 43, vol. V, p. 475. *Tomkins v. Paterson*, (W. D. Wash. 1916) 238 Fed. 879.

VI. WAIVER

2. Appearance and Pleading to the Merits

b. General Appearance (p. 514)

When a waiver.—Where a bill sufficiently alleged diversity of citizenship, but did not allege residence in the district where the suit was brought, an objection for absence of the residential allegations came too late when made for the first time after a full hearing on a motion for a preliminary injunction. *Great Lakes, etc., Transp. Co. v. Scranton Coal Co.*, (C. C. A. 7th Cir. 1917) 239 Fed. 603, 152 C. C. A. 437.

Vol. V, p. 518, Jud. Code, sec. 52.

A joint suit for negligence and misconduct of the directors of a national bank may be brought in a district in which either defendant resides. *Dudley v. Hawkins*, (S. D. Ga. 1917) 239 Fed. 386.

Vol. V, p. 524, Jud. Code, sec. 56.

Proceeding for disapproval of appointment.—In *In re Brown*, (C. C. A. 1st Cir. 1917) 242 Fed. 452, 155 C. C. A.

228, dismissing a petition for disapproval, the court, per Aldrich, J., said: "This is an original proceeding addressed to Hon. George H. Bingham, United States Circuit Judge for the First Circuit, asking, under the authority of section 56 of the Judicial Code, that he disapprove of an order of the District Court of Massachusetts appointing a temporary receiver of the Boston & Maine Railroad, upon the ground that the District Court was induced to make the appointment by alleged misrepresentations in respect to the financial condition of the railroad, as well as by omissions of material statements in respect to its financial condition. After certain preliminary proceedings, it was ordered by Judge Bingham that the application be filed in the Circuit Court of Appeals for the First Circuit, that a hearing thereon might be had by such court. The parties here have raised questions as to time, and questions as to whether the relief should have been sought through a motion in the original proceeding, rather than by a complaint like this. But we prefer to deal with the single question whether section 56 of the Judicial Code was intended to confer upon a Circuit Judge, or upon Circuit Courts of Appeals, authority, not upon appeal, but by original proceeding, to go into the merits of the question of the legality of the appointment of a receiver by a District Court, or whether such section was intended merely to give a Circuit Judge or Circuit Courts of Appeals, under an original proceeding, authority to disapprove of the assumption of jurisdiction and control by the receiver of property outside of the district in which he was appointed, without any order of court in the outside district. We think section 56 was intended merely to confer upon a Circuit Judge, or upon Circuit Courts of Appeals, authority to disapprove of the automatic phase, so to speak, of section 56, which makes the order operate outside the district, and that if it should be found the receiver appointed in one district, where the property lies in different states in the same judicial circuit, should not control the property in districts or states outside of the district in which he was appointed, a Circuit Judge, or the Circuit Court of Appeals might declare against it. . . . While the scope or the extent of the territorial operativeness of a receivership appointment under section 56 in one district of a circuit, where the property lies within different states in the same judicial circuit, is made subject to the disapproval of a Circuit Judge and of Circuit Courts of Appeals, it is clear that the plain, adequate, and sole intended review of the legality of the receivership decree is by appeal by the aggrieved party under section 129 of the Judicial Code direct from

the court making the order to the Circuit Court of Appeals for the circuit." Brown, J., concurred for the further reason that the 30 days within which an order of disapproval might have been made had elapsed; and for the same reason Bingham, J., concurred in the result.

Vol. V, p. 525, Jud. Code, sec. 57.

- I. Construction and application generally.
- II. Applicability to particular matters, suits and proceedings.
- III. Diversity of citizenship.
- VII. Judgment or decree.

I. CONSTRUCTION AND APPLICATION GENERALLY (p. 525)

Where the action taken as a whole, is not one which could be determined by the court so as to give the plaintiff the full and complete relief he seeks, without rendering a personal judgment or decree against an absent nonresident defendant, and by reason of the nonresidence of the plaintiff the federal court has no jurisdiction on the ground of diverse citizenship alone, the action cannot be maintained under this section upon service by publication. *O'Neil v. Birdseye*, (S. D. N. Y. 1917) 244 Fed. 254, where the court said: "The following authorities support this view: *Arkansas v. K. & T. Coal Co.*, 183 U. S. 185, 22 S. Ct. 47, 46 U. S. (L. ed.) 144; *Joy v. St. Louis*, 201 U. S. 332, 26 S. Ct. 478, 50 U. S. (L. ed.) 776; *Wabash R. Co. v. Westside Belt R. Co.*, 235 Fed. 645."

Enforcement of liens.—"The lien must have existed anterior to the suit. Circuit Justice Lowell in *Dormitzer v. Illinois Bridge Co.* (C. C. Mass. 1881) 6 Fed. 218, defining the character of lien or claim to property referred to in the then recent act of March, 1875, now section 57 of the Judicial Code, in a case of attachment of property of an absent defendant, on demurrer to jurisdiction, sustaining same, says: 'A recent statute gives these courts jurisdiction to enforce a lien upon or claim to, or remove an incumbrance or lien or cloud upon the title to, real or personal property within the district, though the defendants, or some of them, may not be either inhabitants thereof or found therein, first giving notice to the absent defendants. St. 1875, c. 137, par. 8; 18 St. 472. But this means a lien or title existing anterior to the suit, and not one caused by the institution of the suit itself.' This early interpretation of the meaning of the act has been sustained and approved in the following cases: *Morris v. Graham* (C. C.) 51 Fed. 56; *Jones v. Gould* (C. C.) 141 Fed. 700; *Shainwald v. Lewis* (D. C.) 5 Fed. 510;

Jones v. Gould, 149 Fed. 154, 80 C. C. A. 1; *W. U. Teleg. Co. v. L. & N. Ry.* (D. C.) 201 Fed. 944; *Bucyrus Co. v. McArthur* (D. C.) 219 Fed. 268; *Wabash R. Co. v. West Side Belt Co.* (D. C.) 235 Fed. 647; *Scott v. Neely*, 140 U. S. 113, 11 Sup. Ct. 712, 35 L. Ed. 358; *Cates v. Allen*, 149 U. S. 451, 13 Sup. Ct. 977, 37 L. Ed. 804." *Albert v. Bascom*, (W. D. Tex. 1917) 245 Fed. 149.

II. APPLICABILITY TO PARTICULAR MATTERS, SUITS, AND PROCEEDINGS (p. 529)

Personal property.—A plenary suit by a trustee in bankruptcy cannot be instituted under this section against a debtor of the bankrupt and the bankrupt's assignee of the debt, in order to set aside the assignment and recover the amount of the debt as an alleged preference. *Murphy v. Ford Motor Co.*, (S. D. Ohio 1916) 241 Fed. 134, where the court granted a motion to quash service of process.

Suit by creditor of decedent trustee.—A suit against devisees and executors of a deceased tenant in common, who was trustee of the plaintiffs, who were his cotenants, the decedent not having accounted, and the suit being in substance one for debt and accounting, was not maintainable in a federal District Court in Texas wherein the land was situated, where neither plaintiffs nor defendants were residents or citizens of the state. *Albert v. Bascom*, (W. D. Tex. 1917) 245 Fed. 149.

Claim to real estate of decedent.—In *Jennings v. Smith*, (S. D. Ga. 1917) 242 Fed. 561, a suit in equity was brought by citizens of Louisiana to establish their claim to the entire estate of a decedent, as heirs and next of kin, against citizens of Georgia claiming in their own behalf the same entire estate. The suit was brought in the southern district of Georgia where all the defendants resided, and where a part of the estate was situated. The court held that it was in part, at least, a suit to enforce a legal or equitable claim to real property within that district, and therefore cognizable by the federal court for that district; and that an amendment of the bill was allowable by making the permanent administrators of the decedent parties defendant, although they were residents of the northern district, but citizens of Georgia; that said administrators were proper, if not necessary parties, whose addition by amendment was authorized by Judicial Code, § 52, and by Equity Rule 37 (superseding the old rule, No. 49) and by the new Equity Rule 28; and that, as the adverse claims of the defendants living in the southern district was the substantial thing to which the jurisdiction of the court initially attached, the addition of the permanent administrators as parties

did not divest the court of its jurisdiction.

III. DIVERSITY OF CITIZENSHIP (p. 533)

Necessity of residence in district.—"A suit to establish a lien upon or claim to property under section 57 of the Judicial Code may be maintained in the district of the state where the property is situated, though neither plaintiff nor defendant is a resident thereof. *Kentucky Coal L. Co. v. Mineral Devel. Co.*, 219 Fed. 45; *Gillespie v. Pocahontas C. & C. Co.* (C. C.) 162 Fed. 742; *Goodman v. Niblack*, 102 U. S. 556, 26 L. Ed. 229." *Albert v. Bascom*, (W. D. Tex. 1917) 245 Fed. 149.

VII. JUDGMENT OR DECREE (p. 537)

Judgments affecting the particular property only may be entered, unless the defendants are served with process in the district or voluntarily submit themselves to the jurisdiction of the court. *Dutton v. Weyeross First Nat. Bank*, (S. D. Fla. 1917) 244 Fed. 236.

"The court is without power to enforce a personal judgment upon citation by publication." *Albert v. Bascom*, (W. D. Tex. 1917) 245 Fed. 149.

Vol. V, p. 541, Jud. Code, sec. 66.

II. JURISDICTION AND POWERS OF FEDERAL AND STATE COURTS

2. State Courts (p. 543)

In general.—Where, pending an appeal from a judgment for plaintiff in an action wherein a federal receiver was served with process of garnishment, the parties stipulated for the sale of property in the garnishee's hands, the proceeds to be subject to the direction of the court, the trial court as ancillary to the original judgment had jurisdiction to enforce the stipulation by directing payment to the plaintiff from the proceeds, and the garnishee having acted on the stipulation could not question such right of the court in the premises. *Lamb v. Whitman*, (1916) 19 Ga. App. 27, 90 S. E. 736.

A state court has no jurisdiction to grant, by injunction against the receiver of a railroad company appointed by a federal court, in a suit brought without leave of the federal court, specific performance of an executory contract made by the railroad company, which the receiver has not assumed. *Dickinson v. Willis*, (S. D. Ia. 1916) 239 Fed. 171.

The institution of a foreclosure suit in a federal court against an interstate railroad company and the appointment of a receiver therein did not abate an action for mandamus in a state court to compel the railroad company to remove one of its bridges over a navigable stream on the ground that it was a public nuisance, and

under this provision of the federal statute it would be good practice to bring in the receiver as a defendant. *Kaw Valley Drainage Dist. v. Missouri Pac. R. Co.*, (1916) 90 Kan. 188, 161 Pac. 937.

Vol. V, p. 607, Jud. Code, sec. 128.

III. "Final decisions."

2. Definition and nature.
4. Reference and accounting.
9. Habeas corpus.
11. Intervention and interpleader.
15. Patents.
18. Miscellaneous.

V. Cases reviewable.

2. Admiralty.
5. Criminal cases.

VIII. Finality of judgment and decree of circuit court of appeals.

3. "Opposite parties . . . citizenship of different states."
9. Criminal cases.

III. "FINAL DECISIONS"

2. Definition and Nature (p. 611)

Generally.—"The question whether a decree is final and appealable is not determined by the name which the court below gives it, but is to be decided by the Appellate Court on consideration of the essence of what is done by the decree. *Potter v. Beal*, 50 Fed. 800, 2 C. C. A. 60." *The Attualita*, (C. C. A. 4th Cir. 1916) 238 Fed. 909, 152 C. C. A. 43.

4. Reference and Accounting (p. 612)

See *Stromberg Motor Devices Co. v. Arnson*, (C. C. A. 2d Cir. 1917) 239 Fed. 891, 153 C. C. A. 19, as cited *infra*, p. 1117.

9. Habeas Corpus (p. 614)

No appeal lies from an order made by the district judge in vacation on the hearing of the issues raised by a petition for the writ of habeas corpus and the return thereto. *Hoskins v. Funk*, (C. C. A. 5th Cir. 1917) 239 Fed. 278, 152 C. C. A. 266, where the court cited *Lambert v. Barrett*, (1895) 157 U. S. 697, 15 S. Ct. 722, 39 U. S. (L. ed.) 865; *Carper v. Fitzgerald*, (1887) 121 U. S. 87, 7 S. Ct. 825, 30 U. S. (L. ed.) 882; *Harkrader v. Wadley*, (1898) 172 U. S. 148, 19 S. Ct. 119, 43 U. S. (L. ed.) 399, and said: "It is not an order of the District Judge in vacation which is made subject to review by this court by section 129 of the Judicial Code. No statute has been found which purports to confer on this court the jurisdiction which section 763 of the Revised Statutes conferred on the Circuit Court to review 'the final decision of any court, justice, or judge inferior to the

circuit court, upon an application for a writ of habeas corpus or upon such writ when issued.' The conclusion reached in the case of *Webb v. York*, 74 Fed. 753, 21 C. C. A. 85, that, notwithstanding the absence of such a statute, the Circuit Courts of Appeals have in some way succeeded to the jurisdiction which the statute just quoted conferred on another court, is one in which we are unable to concur. The reasoning by which that conclusion was reached does not seem to us to be convincing. We have found no statute having the effect of conferring upon this court appellate jurisdiction to review such an order made by a District Judge in vacation as the appeal in this case seeks to present for review."

11. *Intervention and Interpleader* (p. 615)

"In intervention there are two classes of cases.—One class in which the intervention is not indispensable to the preservation or enforcement of the claim of the petitioner and there the permission to intervene is discretionary with the court; another class in which the petitioner claims a lien upon or an interest in specific property in the exclusive jurisdiction and subject to the exclusive disposition of a court, and his interest therein can be established, preserved, or enforced in no other way than by the determination and action of that court. The petitioner, who has a claim of the latter class, has an absolute right to intervene in the proceeding in which the court holds the exclusive custody and dominion of the property, permission for him to intervene is not discretionary with the court, and he may review by appeal an order refusing that right. *Western Union Telegraph Co. v. United States & Mexican Trust Co.*, 221 Fed. 545, 552, 137 C. C. A. 113, 120; *Credits Commutation Co. v. United States*, 177 U. S. 311, 317, 20 Sup. Ct. 636, 44 L. ed. 782; *Credits Commutation Co. v. United States*, 91 Fed. 570, 573, 34 C. C. A. 12; *United States Trust Co. v. Chicago Terminal Transfer R. R. Co.*, 188 Fed. 292, 298, 110 C. C. A. 270; *Minot v. Martin*, 95 Fed. 734, 739, 37 C. C. A. 234, 239; *United States v. Phillips*, 107 Fed. 824, 46 C. C. A. 660." *Swift v. Black Panther Oil, etc., Co.*, (C. C. A. 8th Cir. 1917) 244 Fed. 20, 156 C. C. A. 448.

15. *Patents* (p. 616)

In *Stromberg Motor Devices Co. v. Arnsion*, (C. C. A. 2d Cir. 1917) 239 Fed. 891, 153 C. C. A. 19, the complainant filed a bill upon two patents, one to Ahara and one to Richard. The District Court entered a decree sustaining the Ahara patent with the usual directions as to injunction and accounting and dismissed the bill as to the Richard patent without costs to either party. The com-

plainant appealed from that part of the decree dismissing the bill as to the Richard patent. It was held that the decree was not final, and the appeal was dismissed.

18. *Miscellaneous* (p. 616)

Order sustaining demurrer to plea of recoupment.—In *Treadwell v. Cooker*, (C. C. A. 5th Cir. 1917) 245 Fed. 348, 157 C. C. A. 540, the entire per curiam opinion is as follows: "This was an action by the defendants in error (hereinafter referred to as the plaintiffs) against the plaintiff in error (hereinafter referred to as the defendant) to recover an amount claimed to be due under an alleged contract. To the plaintiff's petition the defendant interposed a plea denying the alleged indebtedness, and also a plea of recoupment seeking to recover of the plaintiff an amount greater than that claimed in the plaintiff's petition. The plaintiff demurred to the last-mentioned special plea as it was amended. With reference to this demurrer the record shows that the court 'ordered that the demurrer be and it is hereby sustained.' Other than the quoted order, the record does not show any disposition of the issues raised by the pleadings in the case. So far as appears from the record, the case stands at issue in the District Court, and the whole of it has not been finally determined by that court. We are of opinion that the order mentioned is not such a final decision as is required to support a writ of error. Judicial Code U. S. § 128; *La Bourgogne*, 210 U. S. 95, 28 Sup. Ct. 664, 52 L. Ed. 973; *Webster Coal & Coke Co. v. Cassatt*, 207 U. S. 181, 28 Sup. Ct. 108, 52 L. Ed. 160; *Bank of Rondout v. Smith*, 156 U. S. 330, 15 Sup. Ct. 358, 39 L. Ed. 441; *Kingman v. Western Mfg. Co.*, 170 U. S. 675, 18 Sup. Ct. 786, 42 L. Ed. 1192; *Maas v. Lonstori*, 166 Fed. 41, 91 C. C. A. 627. The writ of error is dismissed, without prejudice to the right of the defendant to have an appellate review of the ruling complained of, after a final decision of the case."

A judgment denying an application to set aside a default judgment, on the ground that the latter was rendered without jurisdiction, the application having been heard on affidavits, was declared to be final and reviewable in the Circuit Court of Appeals, "in view of the nature of the attack made upon the original judgment." *Stevirmac Oil, etc., Co. v. Dittman*, (1917) 245 U. S. 210, 38 S. Ct. 116, 62 U. S. (L. ed.) 248.

V. CASES REVIEWABLE

2. *Admiralty* (p. 618)

Finality of decree.—A decree on a libel in rem against a ship by which the latter

is released from arrest in effect terminates the proceeding against her and is appealable. *The Attualita*, (C. C. A. 4th Cir. 1916) 238 Fed. 909, 152 C. C. A. 43.

5. *Criminal Cases* (p. 619)

In general.—“The right to an Appellate review of a judgment of conviction in a criminal case does not exist, except by virtue of a statute conferring it.” *American Surety Co. v. U. S.*, (C. C. A. 5th Cir. 1917) 239 Fed. 680, 152 C. C. A. 514.

VIII. FINALITY OF JUDGMENT AND DECREE OF CIRCUIT COURT OF APPEALS

3. “*Opposite Parties . . . Citizens of Different States.*” (p. 623)

In general.—Where it appeared from the averments of the bill and amended bill that the federal jurisdiction was invoked solely upon the ground of diversity of citizenship the appeal was necessarily dismissed. *Hitchman Coal, etc., Co. v. Mitchell*, (1916) 241 U. S. 644, 36 S. Ct. 450, 60 U. S. (L. ed.) 1218, followed in *Eagle Glass, etc., Co. v. Rowe*, (1917) 245 U. S. 275, 38 S. Ct. 80, 62 U. S. (L. ed.) 286.

Federal court of first instance as determining factor.—“The jurisdiction referred to, it has come to be settled, means the jurisdiction of the United States District Court as originally invoked. *Huguley Mfg. Co. v. Galetton Cotton Mills*, 184 U. S. 290, and previous cases cited in the opinion of Mr. Chief Justice Fuller.” *Southern Pac. Co. v. Stewart*, (1917) 245 U. S. 359, 38 S. Ct. 130, 62 U. S. (L. ed.) 345.

Jurisdiction based on other grounds in addition to diverse citizenship.—In *Eichel v. U. S. Fidelity, etc., Co.*, (1917) 245 U. S. 102, 38 S. Ct. 47, 62 U. S. (L. ed.) 177, denying a motion to dismiss an appeal, the court said: “In its simplest form the case is this: *Laura Eichel*, as use plaintiff, began eighteen separate actions at law against the guaranty company in the district court for the western district of Pennsylvania, all being cognizable in that court because arising under a law of the United States. The guaranty company, conceiving that it had a partial equitable defense, not admissible at law, which was common to all the cases, and other partial defenses in particular cases, exhibited in that court a bill describing the actions at law, setting forth the defenses, showing that nothing was in controversy beyond the defenses, and praying that the entire matter be examined and adjudicated in a single proceeding in equity and further proceedings at law enjoined. Although showing that the parties were citizens of different states, the bill was framed as a dependent and ancillary bill, and the court was asked to entertain it as such, in virtue of the

jurisdiction already acquired. The court did entertain it and ultimately sustained the equitable defense, partly sustained some of the others, ascertained the amount of the liability of the guaranty company upon the claims set forth in the actions at law, and ordered that this amount, with interest, be paid in satisfaction of those claims. The circuit court of appeals made a small reduction in the amount of the company's liability, made provision for subrogating the company to the rights of *Mrs. Eichel* against a bankrupt's estate in process of administration, and affirmed the decree as so modified. 154 C. C. A. 237, 241 Fed. 357. Plainly, the bill was dependent and ancillary, and the jurisdiction to entertain it was referable to that invoked and existing in the actions at law out of which it arose. . . . This being so, the decree of the circuit court of appeals is open to review here. See Judicial Code, §§ 128, 241.”

Pleading.—On writ of error to the Circuit Court of Appeals the Supreme Court had jurisdiction to review the whole case where the plaintiff's complaint not only alleged diverse citizenship of the parties, but that certain orders of a state court upon which the defendant relied were void as having been entered without due process of law, in violation of the federal Constitution, and the contention was insisted upon in both the lower courts. *Chaloner v. Sherman*, (1917) 242 U. S. 455, 37 S. Ct. 136, 61 U. S. (L. ed.) 427, citing *Howard v. U. S.*, (1902) 184 U. S. 676, 681, 22 S. Ct. 543, 46 U. S. (L. ed.) 754, 757.

Removal cases.—Where the judgment of the Circuit Court of Appeals was rendered in a case which had been removed from a state court to the District Court upon a petition which set forth as a ground for removal the diversity of citizenship of the parties, and no other ground for removal was in any manner alleged in the petition, the judgment was final and a writ of error was dismissed by the federal Supreme Court, although it appeared that the suit might have been removed because of the federal nature of the cause of action upon which it was brought. *Southern Pac. Co. v. Stewart*, (1917) 245 U. S. 359, 38 S. Ct. 130, 62 U. S. (L. ed.) 345.

Jurisdiction based on other grounds in addition to diverse citizenship.—On rehearing of the case set forth in the last preceding paragraph, viz., in *Southern Pac. Co. v. Stewart*, (1918) 245 U. S. 562, 38 S. Ct. 203, 62 U. S. (L. ed.) 472, the court said: “The opinion in this case was handed down on December 17, 1917 (245 U. S. 359, ante, 156, 38 Sup. Ct. Rep. 130). The cause was submitted on a motion to dismiss which was sustained. The printed record did not contain the proceedings upon the application to remove the cause from the state court.

The briefs of counsel upon both sides, upon which the case was submitted, stated that the case was removed because of diversity of citizenship. Treating these statements as the equivalent of a stipulation, the court decided the case and rendered judgment. It now appears by a certified copy of the record on removal, filed by the plaintiff in error, that the removal petition contained an allegation that the complaint alleged a cause of action arising under the Interstate Commerce Act, and this fact, as well as diversity of citizenship, was made a ground of removal. In this view it follows that, as our order of dismissal rested upon the assumption that the removal was because of diversity of citizenship only, the petition for rehearing must be granted, the order of dismissal set aside, and the cause restored to the docket."

9. Criminal Cases (p. 628)

"A conviction for a criminal although summary contempt is, for the purposes of our reviewing power, a matter of criminal law not within our jurisdiction on error. *Cary Mfg. Co. v. Acme Flexible Clasp Co.* 187 U. S. 427, 428, 47 L. ed. 244, 245, 23 Sup. Ct. Rep. 211; *O'Neal v. United States*, 190 U. S. 36, 38, 47 L. ed. 945, 946, 25 Sup. Ct. Rep. 776, 14 Am. Crim. Rep. 503; *Bessette v. W. B. Conkey Co.* 194 U. S. 324, 335, 48 L. ed. 997, 1004, 24 Sup. Ct. Rep. 665; *Re Merchants' Stock & Grain Co.* 223 U. S. 639, 56 L. ed. 584, 32 Sup. Ct. Rep. 339; *Gompers v. United States*, 233 U. S. 604, 606, 58 L. ed. 1115, 1118, 34 Sup. Ct. Rep. 693, Ann. Cas. 1915D, 1044." *Toledo Newspaper Co. v. U. S.*, (1918) 247 U. S. 402, 38 S. Ct. 560, 62 U. S. (L. ed.) 1186, dismissing a writ of error.

Vol. V, p. 629, Jud. Code, sec. 129.

X. STAY (p. 638)

Stay of "proceedings in other respects."

—After an appeal from an interlocutory decree ordering assignment of certain patents and an accounting of profits and damages, and enjoining use of the inventions, the trial judge denied an application to stay the accounting unless the defendant give bond to pay the amount found due. Upon application thereafter made to a circuit judge for an injunction and stay, the motion was denied. *Chadeloid Chemical Co. v. H. B. Chalmers Co.*, (C. C. A. 2d Cir. 1917) 242 Fed. 71, 155 C. C. A. 15.

A judge of the Circuit Court of Appeals may grant a stay on appeal from an order granting an injunction pendente lite. *Masses Pub. Co. v. Patten*, (C. C. A. 2d Cir. 1917) 285 Fed. 102, 157 C. C. A. 398.

Propriety of granting stay.—Where in a suit against a postmaster to have certain second-class matter forwarded to destina-

tion through the United States mail, but, on the day before the decision of the court in favor of the plaintiff the latter requested the defendant to withhold the matter, as other arrangements for distribution had been made, the judge of the Circuit Court of Appeals on appeal from the interlocutory order granted a stay, because the situation was such that any wrong suffered by the plaintiff could be wholly redressed by damages, apparently measured by the expense of the different transportation arrangement which had been perfected. *Masses Pub. Co. v. Patten*, (C. C. A. 2d Cir. 1917) 245 Fed. 102, 157 C. C. A. 398.

XII. SCOPE OF REVIEW (p. 639)

Reversal for want of jurisdiction.—On appeal from an interlocutory decree, the court may reverse the decree for want of jurisdiction of the court below, and direct a dismissal of the bill on that ground. *Supreme Council, etc. v. Hobart*, (C. C. A. 1st Cir. 1917) 244 Fed. 385, 157 C. C. A. 11.

Appeal from an order granting, etc., injunction.—Reversing a decree of the Circuit Court of Appeals which directed a dismissal of the bill, the federal Supreme Court said: "Since the cause had not gone to final hearing in the district court, the bill could not properly be dismissed upon appeal unless it appeared that the court was in possession of the materials necessary to enable it to do full and complete justice between the parties. Where, by consent of parties, the case has been submitted for a final determination of the merits, or upon the face of the bill there is no ground for equitable relief, the appellate court may finally dispose of the merits upon an appeal from an interlocutory order. *Smith v. Vulcan Iron Works*, 165 U. S. 518, 525, 41 L. ed. 810, 812, 17 Sup. Ct. Rep. 407; *Mast, F. & Co. v. Stover Mfg. Co.* 177 U. S. 485, 494, 44 L. ed. 856, 860, 20 Sup. Ct. Rep. 708; *Castner v. Coffman*, 178 U. S. 168, 184, 44 L. ed. 1021, 1027, 20 Sup. Ct. Rep. 842; *Harriman v. Northern Securities Co.* 197 U. S. 244, 287, 49 L. ed. 739, 760, 25 Sup. Ct. Rep. 493; *United States Fidelity & G. Co. v. Bray*, 225 U. S. 205, 214, 56 L. ed. 1055, 1061, 32 Sup. Ct. Rep. 620; *Denver v. New York Trust Co.* 229 U. S. 123, 136, 57 L. ed. 1101, 1121, 33 Sup. Ct. Rep. 651. But in this case the application for a temporary injunction was submitted upon affidavits taken ex parte, without opportunity for cross-examination, and without any consent that the court proceed to final determination of the merits. Hence there was no basis for such a determination on appeal unless it appeared upon the face of the bill that there was no ground for equitable relief." *Eagle Glass, etc., Co. v. Rowe*, (1917) 245 U. S. 275, 38 S. Ct. 80, 62 U. S. (L. ed.) 286.

Injunctions in patent cases.—In a suit to compel the transfer of patents pursuant to contract, and praying for injunction against further use of the patents and for an accounting of profits, a decree for injunction and accounting was entered and on appeal therefrom the court affirming the decree said: "The court below granted an accounting as against a trustee *ex maleficio*. Whether this was within the rules of equity is not now before us. The decree appealed from is interlocutory. We can review it only by force of the statute now contained in section 129, Jud. Code. An appeal under this section brings up nothing but the propriety of granting or refusing an injunction or receivership, as the case may be. Procedure not specifically covered by the statute remains unchanged thereby. The question of accounting must await final decree and is unaffected by this appeal. *Kilmer v. Griswold*, 67 Fed. 1017, 15 C. C. A. 161; *Howe v. Dayton*, 210 Fed. 801, 127 C. C. A. 351, and cases cited; *Lederer v. Garage, etc., Co.*, 235 Fed. 527, 149 C. C. A. 73." *Chadeloid Chemical Co. v. H. B. Chalmers Co.*, (C. C. A. 2d Cir. 1917) 243 Fed. 606, 156 C. C. A. 304.

Vol. V, p. 649, Jud. Code, sec. 145, par. first.

II. JURISDICTION

7. Claims Sounding in Tort (p. 657)

Where a steamer is seized by the proper military authorities during pendency of rebellion or insurrection upon the ground that it is the property of the enemy and was at the time being used in furtherance of the rebellion, and the vessel is subsequently used in the service of the United States, there is no implied contract to pay for the use thereof. The claim for such use sounds in tort, and the party cannot waive the tort and sue in assumpsit. *Castelo v. U. S.*, (1916) 51 Ct. Cl. 221.

A claim for damages for injuries to mules, which were let to the government under an unauthorized agreement by government agents to exercise extra care of the animals, and injured by the negligence of government employees, was not recoverable under this section. *Occidental Constr. Co. v. U. S.*, (C. C. A. 9th Cir. 1917) 245 Fed. 817, 158 C. C. A. 157.

Vol. V, p. 667, Jud. Code, sec. 152.

"It is plain that § 152 of the Code applies to suits in the district courts, as well as to those in the Court of Claims." *U. S. v. Cress*, (1917) 243 U. S. 316, 37 S. Ct. 380, 61 U. S. (L. ed.) 746.

Vol. V, p. 673, Jud. Code, sec. 162.

The statute is remedial in its nature, as the captured or abandoned property Act was held to be, and is entitled to be liberally construed to effectuate its purposes. *Basch v. U. S.*, (1917) 52 Ct. Cl. 134.

Only the claims of owners can be adjudged under this section, as the language, "claims of those whose property was taken" can have no other meaning. Hence where the owner of cotton sold it to the Confederate States and received in payment bonds of the Confederate States government, but remained in possession of the cotton until it was seized by United States treasury agents, his administrator had no valid claim for the proceeds. *Thompson v. U. S.*, (1918) 246 U. S. 547, 38 S. Ct. 349, 62 U. S. (L. ed.) 876.

Property not "taken."—Where the owners of certain cotton in the state of Louisiana, on June 6, 1865, at which time it was taken into possession of the purchasing agents of the United States, who refused to release it until the owners paid one-fourth the market value thereof, paid said amount under protest, and the same was covered into the treasury, the money became the absolute property of the United States and was not recoverable, as it was not "taken" within the meaning of the statute. *O'Pry v. U. S.*, (1916) 51 Ct. Cl. 111.

Parties, pleadings and proof.—In *Basch v. U. S.*, (1917) 52 Ct. Cl. 134, the court said: "A fact, essential by the terms of said original act, to be proved by a claimant thereunder was that he had not given aid or comfort to the rebellion. We have held that no such proof is essential under section 162 of the Judicial Code as to persons coming within the intent and purpose of the general amnesty, issued December 25, 1868. *Lincoln's case*, 49 C. Cls. 300. This court had long before held it to be unnecessary for a claimant to whom the amnesty applied to aver loyalty in his petition under said original act, notwithstanding the requirement of the statute prescribing what allegations petitions in this court shall contain, the holding being that the loyalty contemplated by said act was loyalty during the Civil War only, and that the amnesty removed any taint of disloyalty, in that it blotted out in legal contemplation the offense itself. *White's case*, 19 C. Cls. 440; *Officers of South Carolina Troops*, 20 C. Cls. 21; *Carlisle's case*, 16 Wall. 147, 151. Recognizing that principle, we held that while the petitions should conform to section 159 of the Judicial Code as a statute of present and prospective operation, the averments as to loyalty would not be referred to acts done in connection with the Civil War, excepting those not included in the amnesty. *Young's case*, 97 U. S. 39. It is in every

case incumbent upon a claimant suing under section 162 to prove (1) that his property was taken, as above stated, was sold, and the proceeds of the sale were paid into the Treasury; (2) his ownership of the property when it was taken. His recovery is by the statute limited to the net proceeds of the sale in the Treasury. We have also held that the suits should be in the name of the original owner or his executor, administrator, or other legal representative, and not in the names of his heirs."

Vol. V, p. 688, Jud. Code, sec. 194.

Power to remand case.—Under the power given by this section, in *General Electric Co. v. U. S.*, (1917) 7 U. S. Cust. App. 484, the case was remanded with directions that the board take and receive such evidence as may be adduced necessary for and in aid of the determination of such facts as will enable the collector to effectually liquidate as to all of the importations covered by the decision and direct liquidation accordingly.

Reversal of decision.—In order to warrant a reversal of a decision of the Board of Appraisers this court must be satisfied that its finding is wholly without evidence to support it or that it was clearly contrary to the weight of evidence. *U. S. v. Mills*, (1917) 7 U. S. Cust. App. 388.

Vol. V, p. 689, Jud. Code, sec. 195.

Reappraisement cases nonappealable.—"Ultimate and exclusive appellate jurisdiction to appraise . . . is conferred on the board of three general appraisers to which the matter is assigned, and the decision of that body becomes, by the precise language of the statute itself [Act of 1913, par. M, sec. III], final and conclusive on all parties and is not subject to further review by appeal." *U. S. v. Loeb, etc., Co.*, (1917) 7 U. S. Cust. App. 380, dismissing an appeal for want of jurisdiction.

Writs of certiorari to the Court of Customs appeals were granted in four memoranda cases reported in *Shaw v. U. S.*, (1916) 242 U. S. 641, 37 S. Ct. 113, 61 U. S. (L. ed.) 541. On certiorari certain judgments of the Court of Customs Appeals were reversed in *U. S. v. M. H. Pulaaki Co.*, (1917) 243 U. S. 97, 37 S. Ct. 346, 61 U. S. (L. ed.) 617.

Vol. V, p. 691, Jud. Code, sec. 198.

Assignments of error.—The alleged absence of samples of the merchandise at the time of reappraisement thereof by the board of three general appraisers may not be urged before this court when the point is not raised by the protest, or when an examination of samples by the board was expressly waived by a stipulation of the parties duly entered of record. *Stubbs v. U. S.*, (1917) 7 U. S. Cust. App. 399.

36 [2d ed.]

A claim for classification originating in appellant's brief in this court, not specified in the exceptions, and not raised before and presented to the Board of Appraisers, is not entitled to the consideration of this court. *U. S. v. McGibbon*, (1916) 7 U. S. Cust. App. 290.

Burden of proof.—The evidence in this case being in such hopeless conflict that the court is unable to decide any question of law or fact presented, nothing is possible, under the rule that the burden is on the appellant to establish the material allegations of his protest by a convincing preponderance of the evidence, except to affirm the decision of the Board of General Appraisers sustaining the decision of the collector. *St. Elmo Cigar Co. v. U. S.*, (1916) 7 U. S. Cust. App. 153.

Judicial notice.—See, in general, *American Bead Co. v. U. S.*, (1916) 7 U. S. Cust. App. 18; *U. S. v. Malhami*, (1916) 7 U. S. Cust. App. 175; *Texas, etc., R. Co. v. U. S.*, (1916) 7 U. S. Cust. App. 328; *Fargo v. U. S.*, (1916) 7 U. S. Cust. App. 346; *U. S. v. Irwin*, (1916) 7 U. S. Cust. App. 360; *U. S. v. Faber*, (1917) 7 U. S. Cust. App. 406; *Tower v. U. S.*, (1917) 7 U. S. Cust. App. 408; *Krusi v. U. S.*, (1911) 1 U. S. Cust. App. 168; *Richard v. U. S.*, (1912) 3 U. S. Cust. App. 193; *U. S. v. Strohmeyer, etc., Co.*, (1916) 6 U. S. Cust. App. 246; *Shallus v. U. S.*, (1912) 2 U. S. Cust. App. 456.

Vol. V, p. 708, Jud. Code, sec. 233.

II. STATE A PARTY

3. *State Against United States* (p. 710)

In *New Mexico v. Lane*, (1917) 243 U. S. 52, 37 S. Ct. 348, 61 U. S. (L. ed.) 588, the court dismissed for want of jurisdiction, because there were questions of law and of fact upon which the United States would have to be heard, an original bill filed by the state of New Mexico against the Secretary of the Interior and the Commissioner of the General Land Office to establish the state's asserted title to certain lands under the school land grant, and to restrain the Interior Department from disposing of such lands.

7. *State Against Citizen* (p. 714)

Citizen of same state.—The Supreme Court would be ousted of jurisdiction of a suit by a state if it should appear that a citizen of the state was an indispensable party. *New Mexico v. Lane*, (1917) 243 U. S. 52, 37 S. Ct. 348, 61 U. S. (L. ed.) 588.

Vol. V, p. 717, Jud. Code, sec. 234.

I. PROHIBITION

4. *Limitation on Right to Issue* (p. 719)

Issuance as matter of right or of discretion.—A writ of prohibition will not

be issued by the federal Supreme Court to prevent further proceedings in an action brought against a contractor and a petitioner for the writ as its surety under the Act of Feb. 24, 1905, ch. 778, in PUBLIC CONTRACTS, vol. 8, p. 374, on the ground that the rights of some of the claimants were asserted after the one-year period of limitation which the statute fixes. *Ex parte Southwestern Surety Ins. Co.*, (1918) 247 U. S. 19, 38 S. Ct. 430, 62 U. S. (L. ed.) 961, where the court said: "This depends upon facts which are not before us and besides involves a question within the competency of the court to decide concerning which, therefore, there is no basis for granting the writ of prohibition or sanctioning a resort to any other extraordinary legal remedy. See *Re New York & P. R. S. S. Co.*, 155 U. S. 523, 39 L. ed. 246, 15 Sup. Ct. Rep. 183; *Re Oklahoma*, 220 U. S. 191, 55 L. ed. 431, 31 Sup. Ct. Rep. 426."

Vol. V, p. 723, Jud. Code, sec. 237.

See also notes to Act of Sept. 6, 1916, ch. 448, sec. 2, in title JUDICIARY, *ante*, this volume, p. 412.

III. Final judgment or decree.

V. Highest court of a state.

VI. Questions reviewable by supreme court.

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b. Nonfederal question in case in addition to federal question.

c. Fictitious, frivolous or moot federal questions.

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7. Res judicata.

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1. In general.

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1. In general.

2. Constitution.

a. Full faith and credit clause.

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XIII. Title, right, privilege, or immunity "specially set-up or claimed."

1. Necessity.

3. Time of making claim.

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XIV. "Decision against title, right, privilege or immunity."

2. Decision when adverse.

XVII. Record.

2. Contents and sufficiency of record.

XIX. Review on writ of certiorari.

III. FINAL JUDGMENT OR DECREE (p. 727)

In general.—A judgment of the state Supreme Court, setting aside the action of the trial court rejecting the plaintiff's claim in an action at law, but not specifically fixing the amount of the plaintiff's recovery, and directing a new trial to accomplish that result, was not final for the purpose of review by the federal Supreme Court. *Bruce v. Tobin*, (1917) 245 U. S. 18, 38 S. Ct. 7, 62 U. S. (L. ed.) 123. See this case quoted in notes to Act of Sept. 6, 1916, ch. 448, sec. 2, *ante*, this volume, title JUDICIARY, at pp. 413-414.

In *Chicago, etc., R. Co. v. Bolch*, (1916) 242 U. S. 616, 37 S. Ct. 211, 61 U. S. (L. ed.) 529, a writ of error to review a judgment which reversed a judgment in favor of defendant in an action under the Employers' Liability Act, and remanded the case for a new trial, was "dismissed for want of jurisdiction upon the authority of *Haseltine v. Central Nat. Bank*, 183 U. S. 130, 22 S. Ct. 49, 46 U. S. (L. ed.) 117; *Schlosser v. Hemphill*, 198 U. S. 173, 25 S. Ct. 654, 49 U. S. (L. ed.) 1000; *Louisiana Nav. Co. v. Oyster Commission*, 226 U. S. 99, 33 S. Ct. 78, 57 U. S. (L. ed.) 138; *Thompson v. St. Louis*, 241 U. S. 637, 36 S. Ct. 445, 60 U. S. (L. ed.) 1215."

Condemnation proceedings.—In *Washington v. Superior Ct.*, (1917) 243 U. S. 251, 37 S. Ct. 295, 61 U. S. (L. ed.) 702, the court dismissed for want of jurisdiction a writ of error to review a judgment of the Washington Supreme Court which affirmed on certiorari a judgment of the Superior Court, in that state, to the effect that the petitioner was entitled to condemn and appropriate certain land for a private way of necessity, and remanded the cause for further proceedings.

V. HIGHEST COURT OF A STATE (p. 730)

"Highest" court.—A writ of error was properly prosecuted to the Court of Appeals of Ohio where the Supreme Court of the State had denied an application to direct the Court of Appeals to certify the record for review, and had dismissed a writ of error for want of jurisdiction. *Cuyahoga River Power Co. v. Northern Realty Co.*, (1917) 244 U. S. 300, 37 S. Ct. 643, 61 U. S. (L. ed.) 1153.

In *Cincinnati Second Nat. Bank v. Okeana First Nat. Bank*, (1917) 242 U. S. 600, 37 S. Ct. 236, 61 U. S. (L. ed.) 518, a writ of error was dismissed because it should have been addressed to the Court of Appeals of Ohio, instead of the Superior Court of Cincinnati.

VI. QUESTIONS REVIEWABLE BY SUPREME COURT

1. Federal Questions

b. Nonfederal Question in Case in Addition to Federal Question (p. 733)

The general rule.—In *Municipal Securities Corp. v. Kansas City*, (1918) 246 U. S. 63, 38 S. Ct. 224, 62 U. S. (L. ed.) 579, dismissing, for want of jurisdiction, a writ of error to a decision of the Missouri Supreme Court, the opinion of the latter court was quoted, and it was then said: "It therefore follows that the Missouri Supreme Court rested its decision upon a ground of general law adequate to support it, independently of the decision upon alleged violation of federal right under the Fourteenth Amendment. In that situation it is well settled that a case from a state court is not reviewable here."

Where the state court "rested its judgment upon a non-federal ground adequate to support it, the existence of a federal question is of no significance." *Bilby v. Stewart*, (1918) 246 U. S. 255, 38 S. Ct. 264, 62 U. S. (L. ed.) 701.

Because the decision was on a nonfederal ground a writ of error was dismissed in *Zavaglia v. Notarbartola*, (1917) 243 U. S. 628, 37 S. Ct. 403, 61 U. S. (L. ed.) 936.

Where a federal question and a question of estoppel in pais, which was nonfederal, were decided against the plaintiff in error, the Supreme Court dismissed a writ of error for the reason that, in the particular case, the estoppel was broad enough to sustain the judgment. *Enterprise Irrigation Dist. v. Farmers' Mut. Canal Co.*, (1917) 243 U. S. 157, 37 S. Ct. 318, 61 U. S. (L. ed.) 644.

In proceedings by an Ohio power company to condemn land by eminent domain four preliminary questions were required by the state law to be passed upon by the Common Pleas Court, viz., the existence of the petitioning corporation, its right to make the appropriation, its inability to agree as to the compensation to be paid for the property, and the necessity for the appropriation. The court did not come to a jury trial on the question of compensation because, after hearing evidence on the preliminary issues, on motion of the defendants it entered an order dismissing the petition, no reason for such decision having been expressed. The case was taken to the Ohio Court of Appeals, it being assigned as error that the trial court had erred in its rulings on the four preliminary questions, and it was further alleged that the refusal of the court to order the condemnation of the land upon the theory that it was not subject to be condemned because, after the suit had been brought it had been acquired by the

traction company, (admitted on its own motion as a party) and by it dedicated to a public use, constituted an impairment of the contract rights of the plaintiff and a taking of its property without due process of law, in violation of the Federal Constitution. Following a judgment of affirmance without a written opinion, the Power Company applied to the state Supreme Court to direct the Court of Appeals to certify the record for review, which was denied, and a writ of error which was prosecuted to the Court of Appeals from the Supreme Court was dismissed for want of jurisdiction for the stated ground that the case did not "involve any question arising under the Constitution of the United States or the state of Ohio." The federal Supreme Court dismissed a writ of error to the state Court of Appeals on the ground that there were independent state grounds broad enough to sustain the judgment. *Cuyahoga River Power Co. v. Northern Realty Co.*, (1917) 244 U. S. 300, 37 S. Ct. 643, 61 U. S. (L. ed.) 1153.

Where the disposition of the case by the state court depended upon the construction of statutes of the United States, and the opinion of the state court showed that those statutes were considered and federal rights asserted under them denied, and the controlling effect of the federal statutes necessarily followed in view of the nature of the rights dealt with, the Supreme Court had jurisdiction on a writ of error. *California v. Deseret Water, etc., Co.*, (1917) 243 U. S. 415, 37 S. Ct. 394, 61 U. S. (L. ed.) 821, citing *Miedreich v. Lavenstein*, (1914) 232 U. S. 236, 242, 34 S. Ct. 309, 58 U. S. (L. ed.) 584, 589; *North Carolina R. Co. v. Zachary*, (1914) 232 U. S. 248, 257, 34 S. Ct. 305, 58 U. S. (L. ed.) 591, *Ann. Cas. 1914C 159*; *Rogers v. Hennepin County*, (1916) 240 U. S. 184, 188, 36 S. Ct. 265, 60 U. S. (L. ed.) 594, 597.

c. Fictitious, Frivolous or Moot Federal Questions (p. 737)

Frivolous claim.—The claim that interstate commerce was unlawfully burdened by requiring that the delivery track owned by a railway company which, though technically a separate legal entity, was the mere agency or instrumentality of two other railway companies through joint ownership and control, should be treated, with respect to intrastate traffic, precisely as many other similarly used and situated tracks had always been used by the owning companies,—was too unsound to merit consideration by the federal Supreme Court on writ of error to a state court. *Chicago, etc., R. Co. v. Minneapolis Civic, etc., Assn.*, (1918) 247 U. S. 490, 39 S. Ct. 553, 62 U. S. (L. ed.) 1229.

In *Valley Steamship Co. v. Wattawa*, (1917) 244 U. S. 202, 37 S. Ct. 523, 61

U. S. (L. ed.) 1084, the court said: "The first point relied upon is entirely without merit, and inadequate to support our jurisdiction. In the absence of congressional legislation the settled general rule is that without violating the commerce clause, the states may legislate concerning relative rights and duties of employers and employees while within their borders, although engaged in interstate commerce," citing cases.

2. Questions of Fact (p. 739)

In general.—"The question arises, whether the basis of fact upon which the state court rested its decision denying the asserted Federal rights has any support in the record; for if not, it is our duty to review and correct the error. *Southern P. Co. v. Schuyler*, 227 U. S. 601, 611, 57 L. ed. 662, 669, 43 L. R. A. (N. S.) 901, 33 Sup. Ct. Rep. 277; *North Carolina R. Co. v. Zachary*, 232 U. S. 248, 259, 58 L. ed. 591, 595, 34 Sup. Ct. Rep. 305, Ann. Cas. 1914C 159, 9 N. C. C. A. 109; *Carlson v. Washington*, 234 U. S. 103, 106, 58 L. ed. 1237, 1238, 34 Sup. Ct. Rep. 717; *Norfolk & W. R. Co. v. West Virginia*, 236 U. S. 605, 610, 59 L. ed. 745, 748, P. U. R. 1915C 293, 35 Sup. Ct. Rep. 437; *Interstate Amusement Co. v. Albert*, 239 U. S. 560, 567, 60 L. ed. 439, 443, 36 Sup. Ct. Rep. 168." *Postal Tel. Cable Co. v. Newport*, (1918) 247 U. S. 464, 38 S. Ct. 566, 62 U. S. (L. ed.) 1215.

And conversely: "It is not the province of this court to weigh conflicting testimony. The record shows testimony supporting the verdict, and that is as far as this court enters upon a consideration of that question." *Great Northern R. Co. v. Donaldson*, (1918) 246 U. S. 121, 38 S. Ct. 230, 62 U. S. (L. ed.) 616, affirming a judgment for plaintiff in an action on the federal Employers' Liability Act.

3. Local and General Law (p. 742)

Doctrine as to conflict of laws.—A contention that the state court made a mistaken application of the doctrines of the conflict of laws in deciding that the cancellation of a land contract was governed by the law of the situs instead of the place of making and performance, was purely a question of local common law with which the federal Supreme Court was not concerned. *Kryger v. Wilson*, (1916) 242 U. S. 171, 37 S. Ct. 34, 61 U. S. (L. ed.) 229.

Municipal nonliability.—In *Municipal Securities Corp. v. Kansas City*, (1918) 246 U. S. 63 38 S. Ct. 224, 62 U. S. (L. ed.) 579, a suit was brought against a city by the assignee of certain tax bills to recover on the ground that the defendant by its official acts, ordinances, and conduct appropriated to the public use the

property and property rights of the plaintiff consisting of valid and subsisting liens upon certain real estate without making compensation therefor, and thereby violated the due process of law clause of the 14th Amendment. But the state court held that, in view of the agreement of plaintiff's assignor with the defendant, and of the Constitution and statutes of the state, and provisions in the defendant's charter, recovery could not be had upon any theory of contract, nor could he recover upon the theory of liquidated compensation for a tort, because no such right of action had been assigned to him. For the reason that the decision in favor of the defendant was based upon this non-federal ground, a writ of error was dismissed by the federal Supreme Court.

Champertous deed.—Where a contention that a deed of land by the heir of an Indian allottee in Oklahoma was champertous within the meaning of the state statute, was considered and decided by the Supreme Court of that state in the light of its own and other decisions, the holding of that court did not involve denial of a federal right, such as would make the ruling reviewable on a writ of error. *Gannon v. Johnston*, (1917) 243 U. S. 108, 37 S. Ct. 330, 61 U. S. (L. ed.) 622.

Adverse possession.—The question whether a plaintiff in a suit to quiet title to land which had been conveyed by the government to a state in aid of railroad construction had acquired title to the land by adverse possession was essentially a local question, involving an appreciation of the evidence as to the conduct of the parties, and not reviewable by the Supreme Court on writ of error. *Donohue v. Vosper*, (1917) 243 U. S. 59, 37 S. Ct. 350, 61 U. S. (L. ed.) 592.

Damages.—Refusal to reverse a judgment for the plaintiff in an action on the federal Employers' Liability Act "on the ground that the damages are excessive" did not present a reviewable federal question. *Louisville, etc., R. Co. v. Holloway*, (1918) 246 U. S. 525, 38 S. Ct. 379, 62 U. S. (L. ed.) 867, the court saying: "It does not appear in the case at bar, as it did in *Chesapeake, etc., R. Co. v. Gainey*, 241 U. S. 494, 496, that the action of the court . . . in sustaining the verdict was necessarily based upon an erroneous theory of federal law."

Will contest.—Where probate of a will was denied on the sole ground of mental incapacity, no reviewable federal question was presented, although the proponents set up a claim that the testator was a full-blood Creek Indian and that therefore "the execution of said will and the legal effect thereof and the necessity or nonnecessity of the probate of said will is thereby involved in this cause and presents federal questions." *Bilby v. Stewart*,

(1918) 246 U. S. 255, 38 S. Ct. 264, 62 U. S. (L. ed.) 701.

4. State Procedure (p. 747)

Pleadings.—"An objection that a copy of the document sued upon should have been filed with the declaration is a matter of state procedure and not open here." *Chicago Life Ins. Co. v. Cherry*, (1917) 244 U. S. 25, 37 S. Ct. 492, 61 U. S. (L. ed.) 966.

As to instructions.—Whether the local rule of practice, that if instructions are offered upon any issue respecting which the jury should be instructed and they are incorrect in form or substance it is the duty of the trial court to prepare or direct the preparation of a proper instruction upon the point in place of the defective one, was applicable in the case at bar, "is a question of local law, with which we have no concern," said the court in *Louisville, etc., R. Co. v. Holloway*, (1918) 246 U. S. 525, 38 S. Ct. 379, 62 U. S. (L. ed.) 867, *distinguishing* *Chesapeake, etc., R. Co. v. De Atley*, (1916) 241 U. S. 310, 36 S. Ct. 564, 60 U. S. (L. ed.) 1016, on the ground that in the latter case the state court "assumed for the purposes of its decision that the local rule applied, and was thereby led to decide a question of federal law," and "consequently we had and exercised jurisdiction to review its decision upon that question."

7. Res Judicata (p. 750)

"Res judicata, like other kinds of estoppel, ordinarily is a matter of state law, and as the decision of the state court in this case in effect rests upon that ground this of itself would be sufficient to sustain the judgment against the reversal in this court, except for two queries that must first be answered: (a) Is the question of state law, in this case, independent of the Federal questions? and (b) Is the decision reached upon that point sufficiently well founded to furnish adequate support for the judgment? *Eustis v. Bolles*, 150 U. S. 361, 366, 37 L. ed. 1111, 1112, 14 Sup. Ct. Rep. 131; *Southern P. Co. v. Schuyler*, 227 U. S. 601, 610, 57 L. ed. 662, 668, 43 L. R. A. (N. S.) 901, 33 Sup. Ct. Rep. 277; *Enterprise Irrig. Dist. v. Farmers' Mut. Canal Co.*, 243 U. S. 157, 164, 61 L. ed. 644, 648, 37 Sup. Ct. Rep. 318." It was so stated in *Postal Tel. Cable Co. v. Newport*, (1918) 247 U. S. 464, 38 S. Ct. 566, 62 U. S. (L. ed.) 1215, holding that the decision of a state court that a judgment against a corporation, rendered in a suit begun two years after it had conveyed all its property in the state to another corporation through which a third corporation afterwards ac-

quired title, concluded the latter corporation as being in privity of estate with the first-named corporation, was too clearly ill-founded to sustain its judgment against reversal in the federal Supreme Court.

X. REPUGNANT TO CONSTITUTION, TREATIES OR LAWS OF UNITED STATES

1. In General (p. 753)

Where the attorney for the plaintiff in an action on the federal Employers' Liability Act, which the defendant settled before trial by paying a certain amount, intervened and claimed his fee, pursuant to his contract with the plaintiff, and recovered judgment for the same, against the defendant in the action, the federal Supreme Court had jurisdiction of a writ of error as against the contention that the validity of the state statute giving attorneys a lien upon a cause action so far as it applied to a lien upon a cause of action arising on the federal Employers' Liability Act was not sufficiently shown to be a ground of the judgment where the question was called to the attention of the trial court and was discussed at length by the appellate state court. *Dickinson v. Stiles*, (1918) 246 U. S. 631, 38 S. Ct. 415, 62 U. S. (L. ed.) 908.

4. Due Process of Law (p. 754)

In general.—"The due process clause does not take up the laws of the several states and make all questions pertaining to them constitutional questions, nor does it enable this court to review the decisions of the state courts upon questions of state law. *Sayward v. Denny*, 158 U. S. 180, 186, 15 S. Ct. 777, 39 U. S. (L. ed.) 941, 943; *Central Land Co. v. Laidley*, 159 U. S. 103, 112, 16 S. Ct. 80, 40 U. S. (L. ed.) 91, 94; *Castillo v. McConico*, 168 U. S. 674, 683, 694, 18 S. Ct. 229, 42 U. S. (L. ed.) 622, 625, 626." *Enterprise Irrigation Dist. v. Farmers' Mut. Canal Co.*, (1917) 243 U. S. 157, 37 S. Ct. 318, 61 U. S. (L. ed.) 644, disregarding the claim that the state court, in disposing of some of the questions, including that of estoppel in pais, misconstrued or misapplied the statutory and common law of the state, and thereby infringed the due process and equal protection clauses of the 14th Amendment.

On writ of error to review a decree which affirmed a decree in favor of a state railroad commission in a suit by a railroad common carrier to enjoin it from enforcing its order requiring locomotives to be equipped with headlights of not less than 1,500 candle power, the railroad company could not insist that the order was so

indefinite and uncertain in its terms as not to furnish an intelligible measure of the company's duty, and was therefore a denial of due process of law, where the state Supreme Court held that the railroad commission had power to grant relief through a rehearing, and that without first resorting to that method of procedure the company was not entitled to have the order set aside by the courts, and the record on the writ of error showed that the company was accorded a hearing upon the very question of modification of the order, but abandoned it. *Vandalia R. Co. v. Public Service Commission*, (1916) 242 U. S. 255, 37 S. Ct. 93, 61 U. S. (L. ed.) 276.

5. Impairment of or Giving Effect to Contract (p. 756)

"In cases of this character the jurisdiction of this court does not depend upon the form in which the legislative action is expressed, but rather upon its practical effect and operation as construed and applied by the state court of last resort, and this irrespective of the process of reasoning by which the decision is reached, or the precise extent to which reliance is placed upon the subsequent legislation. *McCullough v. Virginia*, 172 U. S. 102, 116, 117, 19 S. Ct. 134, 43 U. S. (L. ed.) 362, 387, 398; *Houston, etc., R. Co. v. Texas*, 177 U. S. 66, 77, 20 S. Ct. 545, 44 U. S. (L. ed.) 673, 680; *Terre Haute, etc., R. Co. v. Indiana*, 194 U. S. 579, 589, 24 S. Ct. 767, 48 U. S. (L. ed.) 1124, 1129; *Louisiana v. New Orleans*, 215 U. S. 170, 175, 30 S. Ct. 40, 54 U. S. (L. ed.) 144, 147; *Fisher v. New Orleans*, 218 U. S. 438, 440, 31 S. Ct. 57, 54 U. S. (L. ed.) 1099; *Carondelet Canal & Nav. Co. v. Louisiana*, 233 U. S. 362, 376, 34 S. Ct. 627, 58 U. S. (L. ed.) 1001, 1006; *Louisiana R. & Nav. Co. v. Behrman*, 235 U. S. 164, 170, 35 S. Ct. 62, 59 U. S. (L. ed.) 175, 180. . . . Where this court is called upon in the exercise of its jurisdiction to decide whether state legislation impairs the obligation of a contract, we are required to determine upon our independent judgment these questions: (1) Was there a contract? (2) If so, what obligation arose from it? (3) Has that obligation been impaired by subsequent legislation? *Houston, etc., R. Co. v. Texas*, 177 U. S. 66, 77, 20 S. Ct. 545, 44 U. S. (L. ed.) 673, 680; *St. Paul Gaslight Co. v. St. Paul*, 181 U. S. 142, 147, 21 S. Ct. 575, 45 U. S. (L. ed.) 788, 791; *Terre Haute, etc., R. Co. v. Indiana*, 194 U. S. 579, 589, 24 S. Ct. 767, 48 U. S. (L. ed.) 1124, 1129." *Detroit United Ry. v. Detroit*, (1916) 242 U. S. 238, 37 S. Ct. 87, 61 U. S. (L. ed.) 268.

XII. TITLE, RIGHT, PRIVILEGE OR IMMUNITY CLAIMED UNDER CONSTITUTION OR TREATY, STATUTE OF, OR COMMISSION HELD OR AUTHORITY EXERCISED UNDER UNITED STATES

1. In General (p. 761)

Boundaries between states.—"Whether two states of the Union, either by long acquiescence in a practical location of their common boundary, or by agreement otherwise evidenced, have definitely fixed or changed the limits of their jurisdiction as laid down by the authority of the general government in treaty or statute, to in its nature a federal question." *Cisana v. Tennessee*, (1918) 246 U. S. 289, 38 S. Ct. 306, 62 U. S. (L. ed.) 720.

2. Constitution

a. Full Faith and Credit Clause (p. 761)

Judgments of other states.—An essential step in invoking the full faith and credit clause as to a judgment in another state is that the faith and credit that it has by law or usage in the courts of the state of its rendition must be brought to the attention of the court where the judgment is offered. *Gasquet v. Lapeyre*, (1917) 242 U. S. 367, 37 S. Ct. 165, 61 U. S. (L. ed.) 367.

c. Guaranty of Republican Form of Government (p. 763)

"As has been decidedly repeatedly, the question whether this guaranty has been violated is not a judicial but a political question, committed to Congress, and not to the courts. *Luther v. Borden*, 7 How. 1, 39, 42, 12 L. ed. 581, 597, 599; *Pacific States Teleph. & Teleg. Co. v. Oregon*, 223 U. S. 118, 56 L. ed. 377, 32 Sup. Ct. Rep. 224; *Kiernan v. Portland*, 223 U. S. 151, 56 L. ed. 386, 32 Sup. Ct. Rep. 231; *Marshall v. Dye*, 231 U. S. 250, 256, 58 L. ed. 206, 207, 34 Sup. Ct. Rep. 92; *Ohio ex rel. Davis v. Hildebrandt*, 241 U. S. 565, 60 L. ed. 1172, 36 Sup. Ct. Rep. 708." *Mountain Timber Co. v. Washington*, (1917) 243 U. S. 219, 37 S. Ct. 260, 61 U. S. (L. ed.) 686, Ann. Cas. 1917D 642.

d. Contract Clause (p. 763)

"Impairment by judicial decision does not raise a federal question. *Cross Lake Shooting & Fishing Club v. Louisiana*, 224 U. S. 632, 32 S. Ct. 577, 56 U. S. (L. ed.) 924." *Kryger v. Wilson*, (1916) 242 U. S. 171, 37 S. Ct. 34, 61 U. S. (L. ed.) 229.

4. Statute (p. 765)

In general.—It cannot be held that any right of plaintiff in error under a law of

the United States was infringed by a decision and judgment when the law creating the supposed right was not enacted until after the judgment. *Vandalia R. Co. v. Public Service Commission*, (1916) 242 U. S. 255, 37 S. Ct. 93, 61 U. S. (L. ed.) 276.

Under Employers' Liability Act.—See *Bruce v. Tobin*, (1917) 245 U. S. 18, 38 S. Ct. 7, 62 U. S. (L. ed.) 123, as quoted in notes to Act of September 6, 1916, ch. 448, § 2, *ante*, this volume, title JUDICIARY, at pp. 413, 414.

In *Atlantic Coast Line R. Co. v. Mims*, (1917) 242 U. S. 532, 37 S. Ct. 188, 61 U. S. (L. ed.) 476, quoted *infra*, p. 1128, a writ of error was dismissed because the party's claim under the federal Employers' Liability Act was not asserted at the proper time and in the proper manner.

Under Safety Appliance Act.—Where an order of a state railroad commission was not invalid as regarded the Safety Appliance Act of February 17, 1911, 1912 Supp. p. 339, under the controlling principles declared in *Atlantic Coast Line R. Co. v. Georgia*, (1914) 234 U. S. 280, 290, 34 S. Ct. 829, 58 U. S. (L. ed.) 1312, 1317, the validity of such order having been affirmed by the state Supreme Court, its validity could not be attacked on writ of error in the federal Supreme Court on the ground that it infringed the subsequently enacted amendatory Safety Appliance Act of March 4, 1915, 1916 Supp. p. 215. *Vandalia R. Co. v. Public Service Commission*, (1916) 242 U. S. 255, 37 S. Ct. 93, 61 U. S. (L. ed.) 276.

Under Carmack amendment.—In an action against an initial carrier of an interstate shipment for its negligence and that of connecting carriers, on a through bill of lading containing, among other things, a stipulation that the carrier should not be liable for damages unless claims for damages were reported to the delivering line within thirty-six hours after the consignee had been notified of the arrival of the freight at the place of delivery, the defendant's answer making one of the issues upon which the case was tried and decided, set up this clause in the bill of lading and the failure of the plaintiff to comply with it. It was held that a right was involved which was the creation of a federal statute, viz., the Carmack amendment of June 29, 1906, and the action was necessarily founded on that amendment. *St. Louis, etc., R. Co. v. Starbird*, (1917) 243 U. S. 592, 37 S. Ct. 462, 61 U. S. (L. ed.) 917.

Under banking laws.—In *Union Nat. Bank v. Boyle*, (1917) 243 U. S. 26, 37 S. Ct. 370, 61 U. S. (L. ed.) 570, a writ of error to review a judgment declaring plaintiffs to be the owners of certain shares of stock which they had purchased from the cashier of a national bank was

dismissed for want of jurisdiction. The court said: "When the issue is thus accurately fixed, it is apparent that while in mere form of expression it may seemingly raise a question under the National Bank Act, in substance it presents no question of that character whatever."

Under removal statutes.—Denial of a defendant's contention, at the close of the plaintiff's evidence, that the case which was confessedly not before removable had become removable by failure to prove the allegation which made the case previously nonremovable, did not constitute a denial of federal right where, according to the established doctrine of the federal Supreme Court the defendant had not acquired a right of removal at that time. *Great Northern R. Co. v. Alexander*, (1918) 246 U. S. 276, 38 S. Ct. 237, 62 U. S. (L. ed.) 713.

Miscellaneous.—*Several grounds.*—In *Wellsville Oil Co. v. Miller*, (1917) 243 U. S. 6, 37 S. Ct. 382, 61 U. S. (L. ed.) 559, affirming a judgment which dismissed an appeal from a judgment dismissing the petition in a suit to protect rights under an oil and gas lease in Oklahoma, and to set aside a subsequent conflicting lease, the court said: "Before coming to consider the merits of the errors relied upon, we observe that because of the Federal nature of the court which authorized the lease whose validity was involved, the subject-matter with which the case dealt (Indian land), and the asserted want of power in the Secretary of the Interior to disapprove the lease, and the further assertion that the court had no authority in any event to subject the lease to the approval of the Secretary, we think the issues involved so concern matters of inherently Federal nature as to afford jurisdiction. *Swafford v. Templeton*, 185 U. S. 487, 46 L. ed. 1005, 22 Sup. Ct. Rep. 783; *Fritzen v. Boatmen's Bank*, 212 U. S. 364, 53 L. ed. 551, 29 Sup. Ct. Rep. 366; *Ohio ex rel. Davis v. Hildebrandt*, 241 U. S. 565, 60 L. ed. 1172, 36 Sup. Ct. Rep. 708. We therefore overrule the motion to dismiss."

5. Authority Exercised Under United States (p. 772)

Judgment of federal court.—The Supreme Court had jurisdiction on writ of error to review a decree in which a decree of a federal court was an element of decision against the plaintiff in error and was claimed by him to be an element in his favor. *Donohue v. Vosper*, (1917) 243 U. S. 59, 37 S. Ct. 350, 61 U. S. (L. ed.) 592.

XIII. TITLE, RIGHT, PRIVILEGE OR IMMUNITY "SPECIALLY SET UP OR CLAIMED"

1. Necessity (p. 775)

Unless some title, right, privilege, or immunity is duly and especially claimed,

the federal Supreme Court has no jurisdiction. *Missouri Pac. R. Co. v. Taber*, (1917) 244 U. S. 200, 37 S. Ct. 522, 61 U. S. (L. ed.) 1082.

Claim under federal Employers' Liability Act.—Where an action against a railroad company for death of an employee was based upon the state statute, the answer did not set up or rely upon the federal Employers' Act, and the trial court's attention was not called thereto; and although urged to hold liability depended upon it the state Supreme Court declined to pass upon that point because not presented to the trial court, and this ruling was in entire accord with the state statute and established practice, the federal Supreme Court dismissed a writ of error for want of jurisdiction. *Missouri Pac. R. Co. v. Taber*, (1917) 244 U. S. 200, 37 S. Ct. 522, 61 U. S. (L. ed.) 1082.

3. Time of Making Claim (p. 778)

Claim made at trial.—In *Nevada-California-Oregon Ry. Co. v. Burrus*, (1917) 244 U. S. 103, 37 S. Ct. 576, 61 U. S. (L. ed.) 1019, dismissing a writ of error for want of jurisdiction, Mr. Justice Holmes, speaking for the majority of the court, said: "This is an action for breach of a contract to furnish plaintiff (defendant in error) a special train to carry him from Reno, Nevada, to Doyle, California, where his son was ill, and to bring the two back from that place. The plaintiff got a judgment, and the only question before us is whether any rights of the defendant under the Act to Regulate Commerce have been infringed. The ground on which such an infringement is alleged is that the trial court, after the trial had been going on for more than a day, refused to allow the answer to be amended so as to set up that no tariff rate for special trains had been filed by the defendant and that therefore the contract was illegal. The defendant had mentioned the point at the beginning of the trial, but this was the first time that it was presented in proper form under the state practice, although some months had elapsed since the beginning of the suit, and demurrers and other defenses had been interposed without suggesting this one. The Supreme Court of the state declined to overrule the discretionary judgment of the court below. 38 Nev. 156, L. R. A. 1917D 750, 145 Pac. 926, 8 N. C. C. A. 777. Upon the question whether a claim of immunity under a statute of the United States has been asserted in the proper manner under the state system of pleading and practice 'the decision of the state court is binding upon this court, when it is clear, as it is in this case, that such decision is not rendered in a spirit of evasion, for the purpose of defeating the claim of Federal right.' *Atlantic Coast Line R. Co. v. Mims*, 242

U. S. 532, 535, [37 Sup. Ct. Rep. 188, 61 U. S. (L. ed.) 476, 477]. The most that could be said in this case was that the supreme court was influenced in its judgment by the fact that the railroad, after treating the plaintiff very badly, was trying to escape liability by an afterthought upon a debatable point of law,—not at all by the fact that the law involved was Federal. The plaintiff had tried the case relying upon the presumption which was sufficient as the pleading stood. *Cincinnati, N. O. & T. P. R. Co. v. Rankin*, 241 U. S. 319, 60 L. ed. 1022, L. R. A. 1917A 265, 36 Sup. Ct. Rep. 555. The court reasonably might decline to put him to procuring other evidence from a distance, on the last day of the trial, upon a new issue presented after his evidence was in. We perceive no reason why this court should interfere with the practice of the state."

In *Atlantic Coast Line R. Co. v. Mims*, (1917) 242 U. S. 532, 37 S. Ct. 188, 61 U. S. (L. ed.) 476, the plaintiff administratrix sued a railroad common carrier for wrongful death of her intestate, nothing in her complaint tending to state a cause of action under the federal statute. The defendant filed an answer which was a specific denial under the state Code of Civil Procedure, and when the case was called for the second trial the defendant asked leave to amend its answer by pleading "gross and wilful contributory negligence" on the part of the deceased, which was granted, and the trial proceeded until plaintiff rested her case. The defendant then for the first time offered to introduce testimony which it was claimed, if admitted, would have tended to prove that the train which the deceased was in the act of approaching to inspect when he was killed "was engaged in interstate commerce and that the deceased was in this respect and otherwise engaged in interstate commerce." The trial court rejected this proffer of testimony on the ground that it came too late and was not relevant to any issue tendered by the pleadings in the case. No application was made for leave to amend the answer by adding the claim under the federal law. The federal Supreme Court dismissed a writ of error because the defendant's claim was not asserted at the proper time and in the proper manner.

Claim made in petition for rehearing.—A claim of federal question first made in an application for leave to file a second petition for rehearing comes too late. *Bilby v. Stewart*, (1918) 246 U. S. 255, 38 S. Ct. 264, 62 U. S. (L. ed.) 701.

Claim made in assignment of error.—In *Saunders v. Shaw*, (1917) 244 U. S. 317, 37 S. Ct. 638, 61 U. S. (L. ed.) 1163, holding that the court had jurisdiction on a writ of error, when the state Supreme Court had declined to consider an appli-

cation by plaintiff in error for a rehearing, it was said: "The record discloses the facts but does not disclose the claim of right under the 14th Amendment until the assignment of errors filed the day before the chief justice of the state granted this writ. Of course ordinarily that would not be enough. But when the act complained of is the act of the supreme court, done unexpectedly at the end of the proceeding, when the plaintiff in error no longer had any right to add to the record, it would leave a serious gap in the remedy for infraction of constitutional rights if the party aggrieved in such a way could not come here. The defendant was not bound to contemplate a decision of the case before his evidence was heard, and therefore was not bound to ask a ruling or to take other precautions in advance. The denial of rights given by the 14th Amendment need not be by legislation. *Home Teleph. & Teleg. Co. v. Los Angeles*, 227 U. S. 278, 57 L. ed. 510, 33 Sup. Ct. Rep. 312. It appears that shortly after the supreme court had declined to entertain the petition for rehearing the plaintiff in error brought the claim of constitutional right to the attention of the chief justice of the state by his assignment of errors. We do not see what more he could have done."

4. *Manner of Settling Up Claim* (p. 781)

In general.—In *Valley Steamship Co. v. Wattawa*, (1917) 244 U. S. 202, 37 S. Ct. 523, 61 U. S. (L. ed.) 1084, dismissing for want of jurisdiction, a writ of error to the Ohio Court of Appeals, the court said: "The second reason for reversal now set up was not presented to the trial court in any form. It was not pointed out clearly, if at all, by the petition in error before the Court of Appeals, and was not definitely mentioned in the opinion of that court, whose powers only extend to a review of the trial court's judgment for errors appearing on the record. Section 12,247, Ohio General Code, as amended by 103 Ohio Laws pp. 405, 431. The question, therefore, is not properly before us. *Mutual L. Ins. Co. v. McGrew*, 188 U. S. 291, 308, 309, 47 L. ed. 480, 484, 485, 63 L. R. A. 33, 23 Sup. Ct. Rep. 375."

Illustration of claim sufficiently set up.

—In an action against an initial carrier of an interstate shipment for its negligence and that of connecting carriers, on a through bill of lading containing a stipulation that the carrier should not be liable for damages unless claims for damages were reported to the delivery line within thirty-six hours after the consignee had been notified of the arrival of the freight at the place of delivery, the defendant's answer, making one of the issues upon which the case was tried and decided, set up this clause in the bill of lading and the failure of the plaintiff to comply with

it. It was held that a claim of federal right under the Carmack Amendment of the Interstate Commerce Law was sufficiently made by that answer. *St. Louis, etc., R. Co. v. Starbird*, (1917) 243 U. S. 592, 37 S. Ct. 462, 61 U. S. (L. ed.) 917.

Effect of opinion of state court.—In *Cissna v. Tennessee*, (1918) 246 U. S. 289, 38 S. Ct. 306, 62 U. S. (L. ed.) 720, holding that the court had jurisdiction of a writ of error, although the record did not show that plaintiff in error specially set up in the state courts any contention that the decision of the merits turned upon questions of federal law, except as might appear by inference from the nature of the grounds upon which the decision was rested, the court said: "But if the Supreme Court of the state treated federal questions as necessarily involved and decided them adversely to plaintiff in error, and could not otherwise have reached the result that it did reach, it becomes immaterial to consider how they were raised. *Miedreich v. Lauenstein*, 232 U. S. 236, 243; *North Carolina R. Co. v. Zachary*, 232 U. S. 248, 257; *Mallinckrodt Works v. St. Louis*, 238 U. S. 41, 49." The court then pointed out that the opinion of the state court made it clear that the decision adverse to the plaintiff in error turned essentially upon questions of federal law.

Absence of opinion of state court.—A writ of error will be dismissed where, from absence of an opinion by the court below, it is impossible to say whether its judgment was rested upon state questions adequate to sustain it independent of the federal questions, or upon such federal questions, both being in the case. *Cuyahoga River Power Co. v. Northern Realty Co.*, (1917) 244 U. S. 300, 37 S. Ct. 643, 61 U. S. (L. ed.) 1153.

XIV. "DECISION AGAINST TITLE, RIGHT, PRIVILEGE OR IMMUNITY"

2. *Decision When Adverse* (p. 786)

In an action against an initial carrier of an interstate shipment for its negligence and that of connecting carriers on a through bill of lading, the defendant's answer set up a stipulation in the bill of lading that the carrier should not be liable for damages unless claims for damages were reported to the delivering line within thirty-six hours after the consignee had been notified of the arrival of the freight at the place of delivery, and the answer alleged failure of the plaintiff to comply with the stipulation. On a writ of error to review a judgment against the defendant the federal Supreme Court held that the record sufficiently showed denial of an alleged federal right. *St. Louis, etc., R. Co. v. Starbird*, (1917) 243 U. S. 592, 37 S. Ct. 462, 61 U. S. (L. ed.) 917.

Decision adverse by implication.—A federal question which will sustain a writ of error to a state court is involved

in the denial of a requested instruction that a common-law marriage was not recognized by the Chickasaw Indians, and that the marriage of Chickasaws, without a compliance with their laws was void, where, considering all the requests for rulings and the ruling themselves, it may be assumed that the request meant that a marriage of Chickasaws, although in accord with their customs, was invalid under a Chickasaw law unless solemnized by a judge or ordained preacher, and, by implication, that the Act of Congress of May 2, 1890, 26 Stat. at L. 98, ch. 182, § 38, did not validate the marriage in accordance with still prevailing custom, if no judge or preacher added his sanction. *Carney v. Chapman*, (1918) 247 U. S. 102, 38 S. Ct. 449, 62 U. S. (L. ed.) 1005.

XVII. RECORD

2. Contents and Sufficiency of Record (p. 792)

Opinion of court below.—In *Stadelman v. Miner*, (1918) 246 U. S. 311, 38 S. Ct. 189 mem., 62 U. S. (L. ed.) 737, on petition for rehearing the court said: "There being nothing in the record to establish that the federal question relied upon was raised, considered, or decided below, and indeed, it appearing, so far as the record is concerned, that the federal question was for the first time stated in the assignments made for the purpose of the writ of error to this court, the case was dismissed for want of jurisdiction upon authorities cited. 245 U. S. 636 [38 Sup. Ct. 189, 62 U. S. (L. ed.) 624]. On this application it is stated that in a previous hearing of the case in the court below the federal question relied upon in this court was pressed, and, moreover, was expressly decided, reference being made to the opinion so showing, reported in 83 Or. 361 [155 Pac. 708, 163 Pac. 585, 983]. The application for leave prays that the clerk below be directed to certify the opinion as part of the record, and thus correct the inadvertence in not having previously included it and the oversight of counsel in not having referred to it in their briefs or arguments as affording in this court the basis of authority to review. As the opinion referred to establishes that the Federal question was considered and decided, and as that opinion should have properly been included in the record, it follows that if the mistake of the parties in failing to include or refer to it be overlooked and corrected, which we think should be done, it would result also that the ground upon which the order of dismissal was made would be without foundation and therefore should be set aside. To that end leave to file the petition is granted, and acting upon it as filed, our former judgment of dismissal will be set aside and the case will stand for consid-

eration under the prior submission. Moreover, for the purpose of disposing of the cause, the opinion of the court below, rendered on the previous hearing, will be considered as part of the record without further formal order to the court below to supply the same. And it is so ordered."

XIX. REVIEW ON WRIT OF CERTIORARI (p. 794)

Writ of certiorari was granted to the Court of Appeals of Kentucky in *Baltimore, etc., R. Co. v. Leach*, (1917) 243 U. S. 639, 37 S. Ct. 404, 61 U. S. (L. ed.) 942.

For other reported cases of certiorari granted or denied see notes to Act of Sept. 6, 1916, ch. 448, § 2, *ante*, this volume, title JUDICIARY, p. 414, containing cases reported down to 247 U. S., p. 402.

Finality of the judgment of the state court continues to be an essential for the purposes of the remedy by certiorari. *Bruce v. Tobin*, (1917) 245 U. S. 18, 38 S. Ct. 7, 62 U. S. (L. ed.) 123. See this case quoted in notes to Act of September 6, 1916, ch. 448, § 2, *ante*, this volume, title JUDICIARY, at pp. 413-414.

Vol. V, p. 794, Jud. Code, sec. 238.

- I. Scope of statute and general matters.
 5. Habeas corpus.
- III. Final judgments.
- IV. Jurisdiction of court in issue.
 5. When jurisdiction is in issue.
 6. Certificate.
 - a. Necessity.
 9. Scope of review.
 - a. In general.
 - c. Questions of fact and findings.
 - d. Merits of controversy.
 10. Manner of disposing of appeal by supreme court.
- VI. Constitutional questions in issue.
 4. Exclusiveness of jurisdiction of supreme court.
 7. Scope of review.

I. SCOPE OF STATUTE AND GENERAL MATTERS

5. Habeas Corpus (p. 798)

Where a petition for habeas corpus raised questions involving the application of the Constitution of the United States or the construction of a treaty made under its authority, a direct appeal could be taken under this section from a decision refusing the writ and dismissing the petition. But if no question described in this section was involved no appeal would lie direct from such decision to the Supreme Court. *Horn v. Mitchell*, (1917) 243 U. S. 247, 37 S. Ct. 293, 61 U. S. (L. ed.) 700.

III. FINAL JUDGMENTS (p. 800)

The finality essential to sustain an appeal is not wanting in an order which denies a petition by which a witness, who offered in evidence in an equity suit cer-

tain exhibits owned by him that the court later ordered impounded in the custody of the clerk, seeks to enjoin on constitutional grounds the use of such exhibits before the grand jury as a basis for an indictment for perjury alleged to have been committed in such suit. *Perlman v. U. S.*, (1918) 247 U. S. 7, 38 S. Ct. 417, 62 U. S. (L. ed.) 950.

A judgment denying an application to set aside a default judgment on the ground that the latter was rendered without jurisdiction, the application having been heard upon affidavits, was declared to be in effect a final judgment in an independent action and reviewable as such in the proper court. *Stevirmac Oil, etc., Co. v. Dittman*, (1917) 245 U. S. 210, 38 S. Ct. 116, 62 U. S. (L. ed.) 248, holding, however, that it was reviewable only by the Circuit Court of Appeals and not directly by the Supreme Court under Judicial Code, § 238.

IV. JURISDICTION OF COURT IN ISSUE

5. When Jurisdiction Is in Issue (p. 806)

Admiralty.—Objection to a libel in rem against a vessel on the ground that it was immune to proceedings in any court by reason of being under requisition by the Italian government for the purpose of transporting military supplies, went equally to the jurisdiction of any court, state or federal, and appeal from a decree was properly taken to the Circuit Court of Appeals. *The Attualita*, (C. C. A. 4th Cir. 1916) 238 Fed. 909, 152 C. C. A. 43.

Proper service of process.—An order quashing a writ of summons and directing that the defendant go without day, because the summons was served upon the defendant, a nonresident, while he was returning from the court after testifying as a witness in a case wherein he was plaintiff, was properly reviewed under this section. *Stewart v. Ramsay*, (1916) 242 U. S. 128, 37 S. Ct. 44, 61 U. S. (L. ed.) 192, where the court said: "That a direct writ of error lies in such a case is well settled. *G. & C. Merriam Co. v. Saalfeld*, 241 U. S. 22, 36 S. Ct. 477, 60 U. S. (L. ed.) 868."

The question whether a foreign corporation, was present in a state so as to be amenable to service of process in a case originally brought against it in the federal court in that state was the question presented and decided in *People's Tobacco Co. v. American Tobacco Co.*, (1918) 246 U. S. 79, 38 S. Ct. 233, 62 U. S. (L. ed.) 587, affirming the judgment of the District Court sustaining exceptions, in Louisiana, filed by the corporation to the attempted service upon it.

In *Toledo Rys., etc., Co. v. Hill*, (1917) 244 U. S. 49, 37 S. Ct. 591, 61 U. S. (L. ed.) 982, the question of validity of service of process upon a foreign corporation defendant in a case removed from a state court was decided on direct writ of error to a judgment against the corporation.

In *Meisukas v. Greenough Red Ash Coal Co.*, (1917) 244 U. S. 54, 37 S. Ct. 593, 61 U. S. (L. ed.) 987, a judgment dismissing, for lack of jurisdiction, an action against a foreign corporation not doing business in the state was affirmed on direct writ of error.

In *Philadelphia, etc., R. Co. v. McKibbin*, 243 U. S. 264, 37 S. Ct. 280, 61 U. S. (L. ed.) 710, where judgment was rendered on a verdict against the defendant foreign corporation after denial of its motion to set aside service of summons, supported by affidavits, and its subsequent motion to dismiss, the judgment was reversed on the ground that the defendant was not doing business in the state so as to make it amenable to the service of process there.

Vacation of judgment.—In *Stevirmac Oil, etc., Co. v. Dittman*, (1917) 245 U. S. 210, 38 S. Ct. 116, 62 U. S. (L. ed.) 248, about eighteen months after a default judgment against the plaintiff in error, the marshal's return having been previously amended by order of the court so as to show personal service upon the defendant (plaintiff in error), the plaintiff in error filed an application to set aside the judgment on the ground of want of jurisdiction by proper service of summons, that the marshal's amended return was false, and that the court had no power to order the marshal to amend his return. Upon hearing the application, with accompanying affidavits, the court refused to set aside the former judgment and overruled the application. While conceding that the judgment overruling the application was a final judgment and reviewable in the proper court, the federal Supreme Court dismissed a writ of error brought under Judicial Code, § 238, for the reason that "no question is made concerning the jurisdiction of the court to entertain the proceeding to set aside the former judgment, and that the real controversy arises from the attack upon the authority of the court to order an amendment of the marshal's return, and to render the original judgment."

Other illustrations.—*Louisville, etc., R. Co. v. Rice*, (1918) 247 U. S. 201, 38 S. Ct. 429, 62 U. S. (L. ed.) 1071, holding that the District Court had jurisdiction of a certain suit as one "arising under any law regulating commerce" as provided in Judicial Code, § 24, par. Eighth.

Sutton v. English, (1918) 246 U. S. 199, 38 S. Ct. 254, 62 U. S. (L. ed.) 664, question of jurisdiction of a suit to annul the probate of a will, where such proceeding was by the state law merely supplemental to the proceedings for probate.

Emery v. American Refrigerator Co., (1918) 246 U. S. 634, 38 S. Ct. 414, 62 U. S. (L. ed.) 912, holding that the District Court acquired no jurisdiction by removal from a state court as the amount in controversy was less than \$3,000.

Hopkins v. Walker, (1917) 244 U. S. 486, 37 S. Ct. 711, 61 U. S. (L. ed.) 1270, where a decree dismissing for want of jurisdiction, a bill in a suit to remove a cloud on title of a placer mining claim was reversed on the ground that the bill presented a federal question arising under the mining laws.

Greene v. Louisville, etc., R. Co., (1917) 244 U. S. 499, 37 S. Ct. 673, 61 U. S. (L. ed.) 1280, Ann. Cas. 1917E 88, affirming a decree and holding that the bill showed a question arising under the federal Constitution and that the suit was not against a state.

Hamer v. New York Rys. Co., (1917) 244 U. S. 266, 37 S. Ct. 511, 61 U. S. (L. ed.) 1125, presenting the single question whether the court erred in dismissing a bill for want of jurisdiction on the ground that there was no diverse citizenship.

Removal cases.—*McAllister v. Chesapeake, etc. R. Co.*, 243 U. S. 302, 37 S. Ct. 274, 61 U. S. (L. ed.) 735, reversing a judgment of dismissal of a case removed from a state court and directing that the case be remanded to the state court as not showing a separable controversy or a fraudulent joinder of dependants justifying removal.

6. Certificate

a. Necessity (p. 820)

Equivalent of certificate.—A recital in the order of the district judge allowing a writ of error that the plaintiff's petition "had been dismissed by the judgment of this court upon consideration solely of the question of this court's jurisdiction of the action," was held sufficient to take the place of the certificate required by the Judicial Code, section 238. *McAllister v. Chesapeake, etc., R. Co.*, 243 U. S. 302, 37 S. Ct. 274, 61 U. S. (L. ed.) 735, citing *Excelsior Wooden Pipe Co. v. Pacific Bridge Co.*, (1902) 185 U. S. 282, 22 S. Ct. 681, 46 U. S. (L. ed.) 910, and *Hernndon-Carter Co. v. Norris*, (1912) 224 U. S. 496, 32 S. Ct. 550, 56 U. S. (L. ed.) 857.

b. Scope of Review

a. In General (p. 825)

Where the District Court dismissed an action against a state bank commissioner and the surety on his bond on the ground that the action was against a state in violation of the 11th Amendment, the questions whether the state statute made the surety liable, or whether the plaintiff's pleading or the case was defective in any particular, the federal Supreme Court was not required to decide, since upon neither question was the judgment of the District Court defensively invoked. *Johnson v. Lankford*, (1918) 245 U. S. 541, 38 S. Ct. 203, 62 U. S. (L. ed.) 460.

c. Questions of Fact and Findings (p. 827)

Whether a foreign corporation defendant was doing business within the state,

so as to make service of process upon it valid is a question vital to the jurisdiction of the court, and review of a decision thereon extends to findings of fact as well as to conclusions of law. *Philadelphia, etc., R. Co. v. McKibbin*, (1917) 243 U. S. 264, 37 S. Ct. 280, 61 U. S. (L. ed.) 710, where, upon consideration of affidavits in the record, the finding of the court below that the defendant was doing business within the state was held to be erroneous.

d. Merits of Controversy (p. 827)

"Such appeals or writs of error do not bring here the merits of the controversy, and impose upon this court the single duty of determining whether the district court had jurisdiction of the case." *Stevirmac Oil, etc., Co. v. Dittman*, (1917) 245 U. S. 210, 38 S. Ct. 116, 62 U. S. (L. ed.) 248.

10. Manner of Disposing of Appeal by Supreme Court (p. 827)

Decision right, but for a wrong reason.—Where the District Court erred in dismissing an action on the ground that it was an action against a state, its judgment was nevertheless affirmed where the record showed that the parties were citizens of the same state and no constitutional or other federal question was involved. *Martin v. Lankford*, (1918) 245 U. S. 547, 38 S. Ct. 205, 62 U. S. (L. ed.) 464.

VI. CONSTITUTIONAL QUESTIONS IN ISSUE

4. Exclusiveness of Jurisdiction of Supreme Court (p. 834)

Where the cause of action is one arising under the Constitution of the United States, but there is also diversity of citizenship of the parties, the Circuit Court of Appeals has appellate jurisdiction. *Crescent Mfg. Co. v. Wilson*, (C. C. A. 2d Cir. 1917) 242 Fed. 462, 155 C. C. A. 238.

7. Scope of Review (p. 836)

All questions involved.—If the United States Supreme Court has jurisdiction to review a case originating in a federal District Court on the ground that a constitutional question is in issue, it may determine all questions involved in the case, including questions of state law, irrespective of the disposition that may be made of the federal question, or whether it be found necessary to decide it at all. *Siler v. Louisville, etc., R. Co.*, (1917) 213 U. S. 175, 191, 29 S. Ct. 451, 53 U. S. (L. ed.) 753, 757; *Ohio Tax Cases*, 232 U. S. 576, 586, 34 S. Ct. 372, 58 U. S. (L. ed.) 738, 743." *Greene v. Louisville, etc., R. Co.*, (1917) 244 U. S. 499, 37 S. Ct. 673, 61 U. S. (L. ed.) 1280, Ann. Cas. 1917E 88.

Where the Supreme Court has acquired jurisdiction on direct appeal or writ of error because of a constitutional question raised and passed upon in the court below, all questions involved in the case are before it, and the decision of the court below may be reversed on grounds making consideration of the constitutional questions unnecessary. *McCurdy v. U. S.*, (1918) 246 U. S. 263, 38 S. Ct. 289, 62 U. S. (L. ed.) 706.

Vol. V, p. 838, Jud. Code, sec. 239.

- I. Power and discretion to certify.
 1. In general.
- II. Procedure.
 2. Form and frame of certificate.
 4. Other proceedings.
- III. Table of cases where questions were certified.
- IV. "Whole record and cause" brought up.

I. POWER AND DISCRETION TO CERTIFY

1. In General (p. 839)

Any case within its appellate jurisdiction—*Power enlarged*.—In *U. S. v. Lane*, (1917) 245 U. S. 166, 38 S. Ct. 94, 62 U. S. (L. ed.) 223, in the course of a discussion not necessary to the decision of the case, the court, speaking of section 6 of the Circuit Court of Appeals Act of 1891 (set forth in notes to Judicial Code, § 238, vol. 5, at p. 796), said: "While by the terms of that act such authority apparently extended to 'every such subject within its appellate jurisdiction,' it came to be settled that by limitations found in the text such power to certify was restricted to cases in which the judgments or decrees of the Circuit Court of Appeals were final and therefore not susceptible of being of right otherwise reviewed in this court. *Columbus Watch Co. v. Robbins*, 148 U. S. 266, 268; *Bardea v. Hawarden First Nat. Bank*, 175 U. S. 526, 527. Coming to provide concerning this situation the Judicial Code enlarged the power of a Circuit Court of Appeals by conferring authority to certify 'any case within its appellate jurisdiction' (§ 239)."

II. PROCEDURE

2. Form and Frame of Certificate (p. 846)

Admonition "not to be negligent and ambiguous."—In *Boston Store, etc., v. American Graphophone Co.*, (1918) 246 U. S. 8, 38 S. Ct. 257, 62 U. S. (L. ed.) 551, the court, premising that "the court below . . . has certified certain facts and propounded questions for solution arising therefrom," then said: "The certificate as to some matters of procedure is deficient in specification, and, looked at from the point of view of the questions which it asks, is somewhat wanting in

precision. As, however the matters not specified are not in dispute and the want of precision referred to is not so fundamental as to mislead or confuse, we are of opinion the duty rests upon us to answer the questions, and we come to discharge it, making the statements, however, which we have made as an admonition concerning the duty not to be negligent and ambiguous, but to be careful and precise in preparing certificates as the basis for questions propounded to obtain our instruction."

Certificate pronounced defective.—In *Ricaud v. American Metal Co.*, (1918) 246 U. S. 304, 38 S. Ct. 312, 62 U. S. (L. ed.) 733, the court decided that "for the purpose of making an end of the litigation, we will proceed to answer the questions," but said: "There is no denying that there is much of merit in the objection to the form of this certificate, including the form of the questions, for the reason that the certificate, instead of containing a 'proper statement of the facts on which the questions and propositions of law arise,' as is required by rule 37 of this court, contains a statement of what is 'alleged and denied' by the parties plaintiff and defendant in their pleadings, with the additional statement that there was evidence 'tending to establish the facts as claimed by each party,' but without any finding whatever as to what the evidence showed the facts to be, and the first question, on which the other two depend, is in terms based entirely on an 'assumed' statement of facts. If this certificate had not been supplemented by the recognition by the United States government of the government of Carranza, first as the de facto and later as the de jure government of Mexico, of which facts this court will take judicial notice (*Jones v. United States*, 137 U. S. 202, 34 L. ed. 691, 11 Sup. Ct. Rep. 80; *Underhill v. Hernandez*, 168 U. S. 250, 42 L. ed. 456, 18 Sup. Ct. Rep. 83), it would be our duty to declare the certificate insufficient and to return it to the Circuit Court of Appeals without answering the questions. *Cincinnati, H. & D. R. Co. v. McKeen*, 149 U. S. 259, 37 L. ed. 725, 13 Sup. Ct. Rep. 840; *Graver v. Faurot*, 162 U. S. 435, 40 L. ed. 1030, 16 Sup. Ct. Rep. 799; *Cross v. Evans*, 167 U. S. 60, 40 L. ed. 77, 17 Sup. Ct. Rep. 733; *Stratton's Independence v. Howbert*, 231 U. S. 399, 422, 58 L. ed. 285, 295, 34 Sup. Ct. Rep. 136."

Other certificates quoted.—Questions certified are quoted in *U. S. v. Ginsberg*, (1917) 243 U. S. 472, 37 S. Ct. 422, 61 U. S. (L. ed.) 853.

4. Other Proceedings (p. 848)

Answers to questions.—In *U. S. v. Ginsberg*, (1917) 243 U. S. 472, 37 S. Ct.

422, 61 U. S. (L. ed.) 853, where four questions were certified, the court said: "Considering the accompanying statement of facts and our views in respect of the law, answers to the first and fourth will enable the Circuit Court of Appeals properly to determine the issues involved."

III. TABLE OF CASES WHERE QUESTIONS WERE CERTIFIED (p. 848)

Bond v. Hume, (1917) 243 U. S. 15, 37 S. Ct. 366, 61 U. S. (L. ed.) 565, as to whether the enforcement in Texas of a New York contract for the sale of cotton for future delivery was prevented by the Texas statute against futures.

U. S. v. Waller, (1917) 243 U. S. 452, 37 S. Ct. 430, 61 U. S. (L. ed.) 843, as to whether the United States could maintain, on behalf of certain Indian grantors, a suit to set aside conveyances made by those Indians of their allotments.

U. S. v. Ginsberg, (1917) 243 U. S. 472, 37 S. Ct. 422, 61 U. S. (L. ed.) 853, as to whether the final hearing of a petition for naturalization was had in open court, and whether a certificate of citizenship should be set aside as illegally procured.

Boston Store, etc. v. American Graphophone Co., (1918) 246 U. S. 8, 38 S. Ct. 257, 62 U. S. (L. ed.) 551, presenting questions as to the right of the owner of a patent to restrict by contract the price at which the patented article shall be resold by dealers.

Goldfield Consol. Mines Co. v. Scott, (1918) 247 U. S. 126, 38 S. Ct. 465, 62 U. S. (L. ed.) 1022, concerning the construction and application of the federal Corporation Tax Act of 1909.

IV. "WHOLE RECORD AND CAUSE" BROUGHT UP (p. 853)

Cases where the whole record was brought up under this section are *Pennsylvania R. Co. v. Jacoby*, (1916) 242 U. S. 89, 37 S. Ct. 49, 61 U. S. (L. ed.) 165, judgment of District Court enforcing an award of damages made by the Interstate Commerce Commission because of discrimination in the distribution of coal cars.

Oregon, etc., R. Co. v. U. S., (1915) 238 U. S. 393, 35 S. Ct. 908, 59 U. S. (L. ed.) 1360; (1917) 243 U. S. 549, 37 S. Ct. 443, 61 U. S. (L. ed.) 890, a case twice before the court on certificate and certiorari; to review a decree enjoining certain railway companies from selling any part of the lands granted to them by Congress in violation of the covenants in the land grant Acts, etc.

U. S. v. Wildcat, (1917) 244 U. S. 111, 37 S. Ct. 561, 61 U. S. (L. ed.) 1024, bringing up for review a decree dismissing the bill in a suit by the United States to cancel an Indian allotment certificate and the patents for his allotment.

Vol. V, p. 854, Jud. Code, sec. 240.

II. Discretion in exercise of power.

2. Power sparingly exercised.

3. Before final decree in circuit court of appeals.

III. Procedure for obtaining writ.

6. Petition for certiorari united with appeal or writ of error.

7. On motion to dismiss appeal or writ of error.

V. Hearing and examination, determination, and remand.

VI. Table of certiorari cases.

2. Cases or questions of importance.

3. Division of opinion in circuit court of appeals.

4. Conflicting decisions of circuit courts of appeals.

6. Questions of federal jurisdiction, in general.

8. Patent cases.

10. Criminal cases.

12. Miscellaneous cases.

b. Misapprehension of intimations in decisions of supreme court.

c. Other cases.

II. DISCRETION IN EXERCISE OF POWER

2. Power Sparingly Exercised (p. 856)

See *Houston Oil Co. v. Goodrich*, (1918) 245 U. S. 440, 38 S. Ct. 140, 62 U. S. (L. ed.) 385, as quoted, *infra*, p. 1135.

3. Before Final Decree in Circuit Court of Appeals (p. 857)

Decree on appeal from interlocutory injunction.—In *E. I. Du Pont De Nemours Powder Co. v. Masland*, (1917) 244 U. S. 100, 37 S. Ct. 575, 61 U. S. (L. ed.) 1016, the District Court enjoined defendant in a suit to prevent the use or disclosure of trade secrets, from disclosing such secrets to experts or witnesses produced during the taking of proof. The Circuit Court of Appeals reversed the decree. "Before any further order was entered the writ of certiorari was granted by this court."

After questions had been certified.—See cases cited in notes to vol. V, p. 838, Judicial Code, § 239, under the heading *Cases Where the Whole Record Was Brought Up*, *supra*, this page, and cases under similar heading in vol. V at p. 853.

III. PROCEDURE FOR OBTAINING WRIT (p. 859)

Papers on application to be carefully prepared.—In *Furness v. Yang-Tze Ins. Ass'n*, (1917) 242 U. S. 430, 37 S. Ct. 141, 61 U. S. (L. ed.) 409, dismissing a writ of certiorari as having been improvidently granted, the court remarked that

the writ would not have been allowed had the petition and reply thereto disclosed the real situation, and continued as follows: "During the last term one hundred fifty-four petitions for certiorari were presented and acted upon. Because of recent legislation—Act of September 6, 1916, chap. 448, 39 Stat. at L. 726—their number hereafter may greatly increase. Such petitions go first to every member of the court for examination, and are then separately considered in conference. This duty must be promptly discharged. We are not aided by oral arguments, and necessarily rely in an especial way upon petitions, replies, and supporting briefs. Unless these are carefully prepared, contain *appropriate* references to the record, and present with *studied accuracy, brevity, and clearness* whatever is essential to ready and adequate understanding of points requiring our attention, the rights of interested parties may be prejudiced and the court will be impeded in its efforts properly to dispose of the causes which constantly crowd its docket."

6. Petition for Certiorari United With Appeal or Writ of Error (p. 860)

In *Hanover Star Milling Co. v. Metcalf*, (1916) 240 U. S. 403, 36 S. Ct. 357, 60 U. S. (L. ed.) 713, an appeal was taken, and a writ of certiorari was subsequently granted. On final hearing the appeal was dismissed for want of jurisdiction and the case was disposed of under the writ of certiorari.

7. On Motion to Dismiss Appeal or Writ of Error (p. 861)

Where an appeal was dismissed for want of jurisdiction, the federal jurisdiction having been invoked solely upon the ground of diversity of citizenship, the court said: "Considering the petition for certiorari hitherto filed and upon which action was previously postponed until the merits of the case came to be disposed of, it is ordered that the said petition be, and the same is, granted, the record on appeal to stand as a return to the writ of certiorari." *Hitchman Coal, etc., Co. v. Mitchell*, (1916) 241 U. S. 644, 36 S. Ct. 450, 60 U. S. (L. ed.) 1218, *followed* in *Eagle Glass, etc., Co. v. Rowe*, (1917) 245 U. S. 275, 38 S. Ct. 80, 62 U. S. (L. ed.) 286.

For a case where an appeal was dismissed and "a petition for a writ of certiorari under § 262 of the Judicial Code" was granted, and the record on the appeal treated as the return to the writ, see *Union Pac. R. Co. v. Weld County*, (1918) 247 U. S. 282, 38 S. Ct. 510, 62 U. S. (L. ed.) 1110.

On dismissing a writ of error the court granted a writ of certiorari in *Toledo Newspaper Co. v. U. S.*, (1918) 247 U. S.

402, 38 S. Ct. 560, 62 U. S. (L. ed.) 1186.

In *San Pedro, etc., R. Co. v. U. S.*, (1918) 247 U. S. 307, 38 S. Ct. 498, 62 U. S. (L. ed.) 1129, where a writ of error was dismissed for the reason that the matter in controversy was less than \$1,000, a petition for a writ of certiorari, consideration of which had been postponed until the hearing on the writ of error, was denied because, "since it was presented, all occasion for granting it has been removed by our decision in *Atchison, etc., R. Co. v. U. S.* 244 U. S. 336 [37 S. Ct. 635, 61 U. S. (L. ed.) 1175] which in principle is indistinguishable from the present case and was decided by the Circuit Court of Appeals (200 Fed. 748) upon the authority of its decision in the present case."

V. HEARING AND EXAMINATION, DETERMINATION, AND REMAND (p. 862)

A writ of certiorari improvidently granted was dismissed on the hearing. *Houston Oil Co. v. Goodrich*, (1918) 245 U. S. 440, 38 S. Ct. 140, 62 U. S. (L. ed.) 385 (citing *Furness v. Yang-Tsze Ins. Ass'n*, 242 U. S. 430, 37 S. Ct. 141, 61 U. S. (L. ed.) 409, where the court said: "The controversy (presented in an action at law) is over title to a tract of land in Texas. Both parties claim under one Felder,—petitioners through a deed said to have been executed June 10, 1839, and respondents through one dated June 18, 1839. As grounds for granting the writ, petitioners alleged that the trial court erred in refusing to submit to the jury (1) whether the deed first dated was in fact executed, (2) whether it was presented for record before execution of the later one, (3) whether vendee in the junior deed was a bona fide purchaser for value, (4) whether the junior deed was forged, and (5) whether the action was barred by the three years Statute of Limitations. The propriety of submitting these matters depended essentially upon an appreciation of the evidence. Having heard it all, the trial court concluded there was not enough in support of any one of petitioners' above-stated claims to warrant a finding in their favor, and the circuit court of appeals reached the same result. 141 U. C. A. 264, 226 Fed. 434. The record discloses no sufficient reason within the rule long observed why we should review the judgment below. *Forsyth v. Hammond*, 166 U. S. 506, 41 L. ed. 1095, 17 Sup. Ct. Rep. 665.")

A writ of certiorari was dismissed as improvidently granted in *Furness v. Yang-Tsze Ins. Ass'n*, (1917) 242 U. S. 430, 37 S. Ct. 141, 61 U. S. (L. ed.) 409, where the court said: "We should have denied the petition therefor if the facts essential to an adequate appreciation of the situation had then been brought to our attention. Petitions of this character are

at the risk of the party making them, and whenever, in the progress of the cause, facts develop which, if disclosed on the application, would have induced a refusal, the court may, upon motion by a party, or ex mero motu, dismiss the writ. *United States v. Rimer*, 220 U. S. 547, 55 L. ed. 578, 31 Sup. Ct. Rep. 596; *State, Malone, Prosecutor, v. Water Comrs.* 30 N. J. L. 247."

"*Directly within the rule announced in*" the foregoing case, said the court, a writ of certiorari was dismissed as improvidently granted in *Tyrrell v. District of Columbia*, (1917) 243 U. S. 1, 37 S. Ct. 361, 61 U. S. (L. ed.) 557, a case of certiorari to the District of Columbia Court of Appeals under Judicial Code, § 251.

The ground upon which the writ was asked for is the matter to which the court will confine its discussion. *Alice State Bank v. Houston Pasture Co.*, (1918) 247 U. S. 240, 38 S. Ct. 496, 62 U. S. (L. ed.) 1096.

VI. TABLE OF CERTIORARI CASES

2. Cases or Questions of Importance (p. 866)

U. S. v. Ness, (1917) 245 U. S. 319, 38 S. Ct. 118, 62 U. S. (L. ed.) 321, the court saying: "The case presents questions of importance in the administration of the Naturalization Act."

3. Division of Opinion in Circuit Court of Appeals (p. 867)

North German Lloyd v. Guaranty Trust Co., (1917) 244 U. S. 12, 37 S. Ct. 490, 61 U. S. (L. ed.) 960, reversing decrees which reversed decrees dismissing libels against a German steamship. Justifiable anticipation of war and of consequent capture as defense to alleged breach of shipping contract.

McCoach v. North America Ins. Co., (1917) 244 U. S. 585, 37 S. Ct. 709, 61 U. S. (L. ed.) 1333, affirming a judgment which reversed a judgment in favor of plaintiff in a suit, against the collector of internal revenue to recover taxes paid.

4. Conflicting Decisions of Circuit Courts of Appeals (p. 869)

Caminetti v. U. S., (1917) 242 U. S. 470, 37 S. Ct. 192, 61 U. S. (L. ed.) 442, Ann. Cas. 1917B 1168, L. R. A. 1917F 502, where certain questions as to instructions in a criminal case permitting the jury to draw inferences against the accused from his failure, when on the witness stand, to explain incriminating circumstances, were "of sufficient gravity to require . . . consideration" and there was "a difference of opinion expressed in the cases upon this subject" in the Circuit Courts of Appeals,—and the Supreme

Court itself was divided in opinion in the instant case.

6. Questions of Federal Jurisdiction, in General (p. 870)

Memphis St. R. Co. v. Moore, (1917) 243 U. S. 299, 37 S. Ct. 273, 61 U. S. (L. ed.) 733, as to citizenship for jurisdictional purposes of a nonresident administrator plaintiff.

8. Patent Cases (p. 870)

Minerals Separation v. Hyde, (1916) 242 U. S. 261, 37 S. Ct. 82, 61 U. S. (L. ed.) 286, holding patent valid, but not as to all the claims in suit.

Adamson v. Gilliland, (1917) 242 U. S. 350, 37 S. Ct. 169, 61 U. S. (L. ed.) 356, priority of invention on conflicting testimony.

Goshen Mfg. Co. v. Hubert A. Myers Mfg. Co., (1916) 242 U. S. 202, 37 S. Ct. 105, 61 U. S. (L. ed.) 248, as to whether a court of equity or a court of law was the proper forum in which to determine rights of the plaintiff claiming infringement of a patent.

Straus v. Victor Talking Mach. Co., (1917) 243 U. S. 490, 37 S. Ct. 412, 61 U. S. (L. ed.) 866, Ann. Cas. 1918A 955, L. R. A. 1917E 1196, reversing a decree which reversed a decree of the District Court dismissing the bill in a suit charging violation of a license restriction made by the owner of a patent.

Motion Picture Patents Co. v. Universal Film Mfg. Co., (1917) 243 U. S. 502, 37 S. Ct. 416, 61 U. S. (L. ed.) 871, Ann. Cas. 1918A 959, L. R. A. 1917E 1187, affirming a decree which affirmed a decree dismissing the bill in a suit to enjoin the violation of an alleged license restriction on the use of a patented machine; and overruling *Henry v. A. B. Dick Co.*, (1912) 224 U. S. 1, 32 S. Ct. 364, 56 U. S. (L. ed.) 645, Ann. Cas. 1913D 880.

Railroad Supply Co. v. Elyria Iron, etc., Co., (1917) 244 U. S. 285, 37 S. Ct. 502, 61 U. S. (L. ed.) 1136, patentability of certain improvements in railroad tie plates.

Hart Steel Co. v. Railroad Supply Co., (1917) 244 U. S. 294, 37 S. Ct. 506, 61 U. S. (L. ed.) 1148, holding that a decision of one Circuit Court of Appeals that a patent was void for want of novelty and invention was res judicata and conclusive upon another Circuit Court of Appeals in a suit with identical subject matter and issues and privity of parties.

William Cramp, etc., Ship, etc., Bldg. Co. v. International Curtis Marine Turbine Co., (1918) 246 U. S. 28, 38 S. Ct. 271, 62 U. S. (L. ed.) 560, and *Marconi Wireless Tel. Co. v. Simon*, (1918) 246 U. S. 46, 38 S. Ct. 275, 62 U. S. (L. ed.)

568, apparently because of misapprehension by the courts below of what was decided in a recent opinion of the Supreme Court.

Grinnell Washing Mach. Co. v. E. E. Johnson Co., (1918) 247 U. S. 426, 38 S. Ct. 547, 62 U. S. (L. ed.) 1196, holding patent void for want of invention.

10. Criminal Cases (p. 871)

Caminetti v. U. S., (1917) 242 U. S. 470, 37 S. Ct. 192, 61 U. S. (L. ed.) 442, Ann. Cas. 1917B 1168, L. R. A. 1917F 502, described in this note, *supra*, at p. 1136.

Toledo Newspaper Co. v. U. S., (1918) 247 U. S. 402, 39 S. Ct. 560, 62 U. S. (L. ed.) 1186, a conviction for a criminal, although summary, contempt.

12. Miscellaneous Cases

b. Misapprehension of Intimations in Decisions of Supreme Court (p. 872)

See William Cramp, etc., Ship, etc., Bldg. Co. v. International Curtis Marine Turbine Co., (1918) 246 U. S. 28, 38 S. Ct. 271, 62 U. S. (L. ed.) 560, and Marconi Wireless Tel. Co. v. Simon, (1918) 246 U. S. 46, 38 S. Ct. 275, 62 U. S. (L. ed.) 568.

c. Other Cases (p. 872)

U. S. v. Northern Pac. R. Co., (1916) 242 U. S. 190, 37 S. Ct. 22, 61 U. S. (L. ed.) 240, as to construction of the penalty provision of the federal Hours-of-Service Act for failure to file report, etc.

Sim v. Edenborn, (1916) 242 U. S. 131, 37 S. Ct. 36, 61 U. S. (L. ed.) 199, holding that, in an action at law, the court below should have followed the decision of the highest court of the state as to the rights of the parties on the same state of facts, especially where such decision was well supported both by reason and upon authority.

Von Baumbach v. Sargent Land Co., (1917) 242 U. S. 503, 37 S. Ct. 201, 61 U. S. (L. ed.) 460, where the decisive question was whether the payments made as so-called royalties on mining leases amounted to income so as to bring such payments within the scope of the federal Corporation Tax Act of 1909; U. S. v. Biwabik Min. Co., (1918) 247 U. S. 116, 38 S. Ct. 11 mem., 62 U. S. (L. ed.) 1017, involving a similar question, the court below having misconceived the decision in the Sargent Land Company Case, above cited; Doyle v. Mitchell Bros. Co., (1918) 247 U. S. 179, 38 S. Ct. 467, 62 U. S. (L. ed.) 1054; Hays v. Gauley Mt. Coal Co., (1918) 247 U. S. 189, 38 S. Ct. 470, 62 U. S. (L. ed.) 1061; U. S. v. Cleveland, etc., R. Co., (1918) 247 U. S. 195, 38 S. Ct. 472, 62 U. S. (L. ed.) 1064, and cases also arising under the federal Corporation Tax Act of 1909.

Herbert v. Shanley Co., (1917) 242 U. S. 591, 37 S. Ct. 232, 61 U. S. (L. ed.) 511, a suit for infringement of a copyright, presenting the question "whether the performance of a copyrighted musical composition in a restaurant or hotel without charge for admission to hear it infringes the exclusive right of the owner of the copyright to perform the work publicly for profit."

Pease v. Rathbun-Jones Engineering Co., (1917) 243 U. S. 273, 37 S. Ct. 283, 61 U. S. (L. ed.) 715, Ann. Cas. 1918C 1147, as to summary judgment by District Court against sureties on a supersedeas bond on appeal after affirmance of the decree.

Lie v. San Francisco, etc., Steamship Co., (1917) 243 U. S. 291, 37 S. Ct. 270, 61 U. S. (L. ed.) 726, affirming, on consideration of the evidence, a decree adjudging two ships to have been equally in fault for a collision.

Atchison, etc., R. Co. v. U. S., (1917) 244 U. S. 336, 37 S. Ct. 635, 61 U. S. (L. ed.) 1175, Ann. Cas. 1918C 794, as to the construction of the federal Hours of Service Act, where there had been "possibly diverse rulings" on the question by the Interstate Commerce Commission.

U. S. v. Jack, (1917) 244 U. S. 397, 37 S. Ct. 605, 61 U. S. (L. ed.) 1222, to review the denial of applications for a mandamus and certiorari to a judge of the federal District Court to allow an appeal in a certain case.

Rock Spring Distilling Co. v. Gaines, (1918) 246 U. S. 312, 38 S. Ct. 327, 62 U. S. (L. ed.) 738, a trademark case, effect of prior adjudication in another lower federal court as an estoppel.

Pendleton v. Benner Line, (1918) 246 U. S. 353, 38 S. Ct. 330, 62 U. S. (L. ed.) 770, a libel in admiralty, application of the limitation of liability statute.

Chicago, etc., R. Co. v. U. S., (1918) 246 U. S. 512, 38 S. Ct. 351, 62 U. S. (L. ed.) 859, suit by the government to recover a penalty for violation of the "28 Hour Law" of Congress, determining the construction and application of that law.

Chicago, etc., R. Co. v. U. S., (1918) 247 U. S. 197, 38 S. Ct. 442, 62 U. S. (L. ed.) 1066, holding that, on the agreed statement of facts, the railroad company had violated the Hours of Service Act.

Erie R. Co. v. Hilt, (1918) 247 U. S. 97, 38 S. Ct. 435, 62 U. S. (L. ed.) 1003, construction of New Jersey statute in action for personal injuries by child of tender years while playing on a railroad track.

Lynch v. Turrish, (1918) 247 U. S. 221, 38 S. Ct. 537, 62 U. S. (L. ed.) 1087, involving construction and application of the federal Income Tax Act of 1913.

Lynch v. Hornby, (1918) 247 U. S. 339, 38 S. Ct. 543, 62 U. S. (L. ed.) 1149,

construction of the Income Tax Act of Oct. 3, 1913. *Chelentis v. Luckenbach Steamship Co.*, (1918) 247 U. S. 372, 38 S. Ct. 13 mem., 62 U. S. (L. ed.) 1171, as to remedy for a marine tort by personal injury action in a state court.

Friederichsen v. Renard, (1918) 247 U. S. 207, 38 S. Ct. 450, 62 U. S. (L. ed.) 1075.

Vol. V, p. 877, Jud. Code, sec. 241.

- I. Decisions of Circuit Courts of Appeals "not made final."
- II. Mode and scope of review.
- III. Amount in controversy.
 2. Ascertainment of amount.
 - b. Particular instances.

I. DECISIONS OF CIRCUIT COURTS OF APPEALS "NOT MADE FINAL" (p. 878)

See notes to Judicial Code, § 128, *supra*, p. 1116.

In view of the changes made in Judicial Code, § 246, by the Amendatory Act of Jan. 28, 1915, vol. V, p. 900, and vol. VI, p. 145, the federal Supreme Court has no jurisdiction to review on writ of error a judgment of the Circuit Court of Appeals for the Ninth Circuit affirming a judgment of the Supreme Court of Hawaii, rendered in a case where there was no federal question and no diversity of citizenship. *Inter-Island Steam Nav. Co. v. Ward*, (1916) 242 U. S. 1, 37 S. Ct. 1, 61 U. S. (L. ed.) 113.

II. MODE AND SCOPE OF REVIEW (p. 878)

Only final judgments.—No appeal lies from a decree of a federal Circuit Court of Appeals which affirmed an interlocutory order of a District Court denying an application for a preliminary injunction upon the ground that there was an adequate remedy at law, where final decree dismissing the bill was neither entered in the District Court nor directed by the Circuit Court of Appeals so as to preclude amendment of the bill and further proceedings. *Union Pac. R. Co. v. Weld County*, (1918) 247 U. S. 282, 38 S. Ct. 510, 62 U. S. (L. ed.) 1110.

III. AMOUNT IN CONTROVERSY

2. Ascertainment of Amount
 - b. Particular Instances (p. 884)

Action for statutory penalties.—In an action by the United States to recover penalties for certain violations of the Hours of Service Act of March 4, 1907, ch. 2939, title RAILROADS, vol. VIII, p. 1383, where defendant challenged and sought to have reviewed only so much of the judgment against it affirmed by the Circuit Court of Appeals as awarded recovery of six penalties of \$150 each, for as many

separate violations of the Act, the requisite jurisdictional amount of \$1,000 was not in dispute, and a writ of error was dismissed. *San Pedro, etc., R. Co. v. U. S.*, (1918) 247 U. S. 307, 38 S. Ct. 498, 62 U. S. (L. ed.) 1129.

Habeas corpus.—In *Horn v. Mitchell*, (1917) 243 U. S. 247, 37 S. Ct. 293, 61 U. S. (L. ed.) 700, dismissing an appeal from a decree of the Circuit Court of Appeals, which affirmed a decree of the District Court refusing relief by habeas corpus to a person in custody under an indictment found in that district, the court said: "It long has been settled that the jurisdiction conferred by Congress upon any court of the United States in a case where the matter in controversy exceeds a certain sum of money does not include cases where the rights of the parties are incapable of being valued in money, and therefore excludes habeas corpus cases. *Kurtz v. Moffitt*, 115 U. S. 487, 498, 29 L. ed. 458, 460, 6 Sup. Ct. Rep. 148; *Lau Ow Bew v. United States*, 144 U. S. 47, 58, 36 L. ed. 340, 344, 12 Sup. Ct. Rep. 517; *Cross v. Burke*, 146 U. S. 82, 88, 36 L. ed. 896, 898, 13 Sup. Ct. Rep. 22; *Whitney v. Dick*, 202 U. S. 132, 135, 50 L. ed. 963, 964, 26 Sup. Ct. Rep. 584; *Healy v. Backus*, 241 U. S. 655, 60 L. ed. 1224, 36 Sup. Ct. Rep. 726."

Vol. V, p. 887, Jud. Code, sec. 242.

Judgments appealable.—"Upon the authority of § 242, Judicial Code," the appeal in *Grand Trunk Western R. Co. v. U. S.*, (1918) 246 U. S. 652, 38 S. Ct. 335, 62 U. S. (L. ed.) 922, was "dismissed for want of jurisdiction."

Vol. V, p. 900, Jud. Code, sec. 246.

Power to review.—The federal Supreme Court has no jurisdiction to review on writ of error a judgment of the Circuit Court of Appeals for the ninth circuit, affirming a judgment of the Supreme Court of Hawaii, rendered in a case where there was no federal question and no diversity of citizenship. *Inter-Island Steam Nav. Co. v. Ward*, (1916) 242 U. S. 1, 37 S. Ct. 1, 61 U. S. (L. ed.) 113.

Vol. V, p. 907, Jud. Code, sec. 248.

See Act of Sept. 6, 1916, ch. 448, §§ 5, 6, *ante*, this volume, p. 422.

Mode of review.—Appeal, not writ of error, is the proper method of reviewing a decree of the Philippine Supreme Court in a suit in which the complaint set forth a cause of action at law upon a contract, and the answer was in effect a bill in equity for reformation and incidentally to enjoin the action at law, since the proceeding thus became an equitable one. *Philippine Sugar Estates Development Co.*

v. Philippine Islands, (1918) 247 U. S. 385, 38 S. Ct. 513, 62 U. S. (L. ed.) 1177.

Writ of error was the proper method by which to review the judgment of the Supreme Court of the Philippines in a proceeding for registration of certain property under the Torrens System. *Gauzon v. Compania General, etc.*, (1917) 245 U. S. 86, 38 S. Ct. 46, 62 U. S. (L. ed.) 165.

Scope of review.—Upon a writ of error to review a judgment in a proceeding for registration under the Torrens System, the court will not reconsider the conclusions of the lower court, which find support in the record, in reaching its judgment. *Gauzon v. Compania General, etc.*, (1917) 245 U. S. 86, 38 S. Ct. 46, 62 U. S. (L. ed.) 165.

Final judgment on reversal.—The federal Supreme Court, having determined, on appeal from the Philippine Supreme Court, that that court erred in refusing to consider evidence of mutual mistake offered under appropriate pleadings, with a view to reforming the instrument in suit, will finally dispose of the case, where all the proffered evidence was admitted by the trial court and is in the record, and due exception was saved to the refusal of the trial court to grant a new trial on the ground that the evidence did not justify the findings. *Philippine Sugar Estates Development Co. v. Philippine Islands*. (1918) 247 U. S. 385, 38 S. Ct. 513, 62 U. S. (L. ed.) 1177.

Vol. V, p. 913, Jud. Code, sec. 250.

Final judgment or decree subject to review.—Under this section a judgment of the Court of Appeals of the District of Columbia, which affirmed a judgment of the Supreme Court of the District, quashing a writ of certiorari directed to the judge of the District Police Court to bring up for review the record and proceedings before trial in a criminal prosecution, and remanding the record to the Police Court, was not final for the purpose of review by the federal Supreme Court. *Hartmanft v. Mullowny*, (1918) 247 U. S. 295, 38 S. Ct. 518, 62 U. S. (L. ed.) 1123, dismissing a writ of error for want of jurisdiction.

Sixth clause.—The Supreme Court had jurisdiction to review a judgment of the Court of Appeals of the District of Columbia in an action on the federal Employers' Liability Act, where the defendant contended that it was not a "common carrier by railroad" within the meaning of that Act. *Washington Ry., etc., Co. v. Scala*, (1917) 244 U. S. 630, 37 S. Ct. 654, 61 U. S. (L. ed.) 1360.

Any law of the United States.—In a proceeding for mandamus to restore the relator to office, where the defendant's return, referring to the Act of Congress

governing the Civil Service (Act of Aug. 24, 1912, ch. 389, § 6, 37 Stat. L. 555, in *PUBLIC OFFICERS AND EMPLOYEES*, vol. VIII, p. 956), especially challenged the assertion that the relator was within the provisions of that law inhibiting removal without charges and hearing, and asserted that the right to appoint and remove from the office in question was excepted out of such provisions. A demurrer to the return as stating no defense was overruled, and from the judgment dismissing the proceeding the case was taken to the Court of Appeals of the District. It was held to be a case where the judgment of the Court of Appeals would not be final. *U. S. v. Lane*, (1917) 245 U. S. 166, 38 S. Ct. 94, 62 U. S. (L. ed.) 223, where the court said: "It is not open to controversy that the judgments or decrees of the court below are not made final by § 250 in cases involving the interpretation and effect of an act of Congress general in character, or the general duty or power of an officer under the law of the United States, as contradistinguished from merely local authority. *American Secur. & T. Co. v. District of Columbia*, 224 U. S. 491, 56 L. ed. 856, 32 Sup. Ct. Rep. 553; *McGowan v. Parish*, 228 U. S. 312, 57 L. ed. 849, 33 Sup. Ct. Rep. 462; *United Surety Co. v. American Fruit Product Co.* 238 U. S. 140, 59 L. ed. 1238, 35 Sup. Ct. Rep. 828; *Newman v. United States*, 238 U. S. 537, 59 L. ed. 1446, 35 Sup. Ct. Rep. 881."

Criminal cases.—Certiorari issued out of the Supreme Court of the District of Columbia to the judge of the Police Court of the District, to bring up for review the record and proceedings before trial in a criminal prosecution, is not a new or independent cause, but is a mere step in the pending criminal case, and a judgment of the Court of Appeals of the District, which affirmed a judgment of the District Supreme Court, quashing the writ, was held to have been rendered in a case arising under the criminal laws, and therefore excluded from the appellate jurisdiction of the federal Supreme Court, even though a jurisdictional question or a question concerning the construction of a federal statute was involved. *Hartmanft v. Mullowny*, (1918) 247 U. S. 295, 38 S. Ct. 518, 62 U. S. (L. ed.) 1123.

Vol. V, p. 917, Jud. Code, sec. 251.

Certiorari.—Where judgment of the District of Columbia Supreme Court, entered on a verdict, was reversed by the Court of Appeals of the District, and the cause was remanded for further proceedings, this judgment of reversal was reviewable on certiorari. *George A. Fuller Co. v. Otis Elevator Co.*, (1918) 245 U. S. 489, 38 S. Ct. 180, 62 U. S. (L. ed.) 422.

Table of certiorari cases.—*Ewing v. U. S.*, (1917) 244 U. S. 1, 37 S. Ct. 494, 61 U. S. (L. ed.) 955, reversing a judg-

ment which affirmed a judgment awarding mandamus to compel the commissioner of patents to declare an interference between two applications for a similar invention.

Supreme Council, etc., *v.* Behrend, (1918) 247 U. S. 394, 38 S. Ct. 522, 62 U. S. (L. ed.) 1182, was a case heard on certiorari.

A writ of certiorari was dismissed as improvidently granted in *Tyrrel v. District of Columbia*, (1917) 243 U. S. 1, 37 S. Ct. 361, 61 U. S. (L. ed.) 557, because the petitioner for certiorari had not reserved an exception to the charge of the court on the exact point which was made the basis of the writ of certiorari.

Certified questions.—In *U. S. v. Lane*, (1917) 245 U. S. 166, 38 S. Ct. 94, 62 U. S. (L. ed.) 223, a certificate was dismissed for want of jurisdiction, for the reason that Judicial Code, § 251, confers authority to certify only in cases where the judgments or decrees of the court are made final by Judicial Code, § 250, and the instant case was not one of that character.

Vol. V, p. 921, Jud. Code, sec. 256, par. third.

See cases under vol. IV, p. 1005, Judicial Code, § 24, par. Third, *supra*, p. 1095.

Vol. V, p. 921, Jud. Code, sec. 256, par. fifth.

See notes to vol. IV, p. 1037, Judicial Code, § 24, par. Seventh, *supra*, p. 1096.

Vol. V, p. 928, Jud. Code, sec. 262.

I. Scire facias.

5. Particular cases.

II. All writs not specifically provided for by statute.

1. Generally.

4. Certiorari.

9. Mandamus.

a. Jurisdiction in general.

b. Controlling judicial action or discretion.

d. Enforcement of judgment generally.

16. Warrant.

I. SCIRE FACIAS

5. Particular Cases (p. 930)

Forfeited recognizance or bail bond.—A District Court has jurisdiction to enforce a forfeited bail bond by writ of scire facias. *Ewing v. U. S.*, (C. C. A. 6th Cir. 1917) 240 Fed. 241, 153 C. C. A. 167.

II. ALL WRITS NOT SPECIFICALLY PROVIDED FOR BY STATUTE

1. Generally (p. 930)

Extent of jurisdiction.—“Furthermore, we do not think section 262 of the Code

(R. S. § 716; Judiciary Act Sept. 24, 1789, c. 20, § 14, 1 Stat. 73) gives authority to a federal District Court to issue processes to run beyond the limits of the territory in which it is established, but rather that it is a designation of the form or character of writs which such court may issue within the territory where it is established. *Hills & Co. v. Hoover*, 220 U. S. 329, 336, 337, 31 Sup. Ct. 402, 55 L. Ed. 485, Ann. Cas. 1912C, 562; *McClellan v. Carland*, 217 U. S. 269, 279, 30 Sup. Ct. 501, 54 L. Ed. 762.” *Mitchell v. Dexter*, (C. C. A. 1st Cir. 1917) 244 Fed. 926, 157 C. C. A. 276.

4. Certiorari (p. 931)

When writ will be issued.—“A petition for a writ of certiorari under § 262 of the Judicial Code,” said the court, was granted in *Union Pac. R. Co. v. Weld County*, (1918) 247 U. S. 282, 38 S. Ct. 510, 62 U. S. (L. ed.) 1110, which held that no appeal lies from a decree of a federal Circuit Court of Appeals which affirmed an interlocutory order of a District Court denying an application for a preliminary injunction upon the ground that there was an adequate remedy at law, where final decree dismissing the bill was neither entered in the District Court nor directed by the Circuit Court of Appeals so as to preclude amendment of the bill and further proceedings. Consideration of the petition for the writ of certiorari was postponed to the hearing on the appeal, at which hearing, “we now grant the petition and treat the record on the appeal as the return to the writ.”

9. Mandamus

a. Jurisdiction in General (p. 934)

Nature of remedy.—The refusal of a federal Circuit Court of Appeals to direct the clerk of that court to file the record in an appeal by seamen from a decree dismissing their libels for wages, without making a deposit to secure the costs, may be reviewed by the federal Supreme Court by mandamus. It was so held in *Ex parte Abdu*, (1918) 247 U. S. 27, 38 S. Ct. 447, 62 U. S. (L. ed.) 966, holding that on submission of the rule to show cause the Supreme Court will consider the authority of the court below to make the order, although the writ prayed for is not directed to the court, but to its clerk, and hence, in form seeks to direct the clerk to disobey the order of the court, leaving the order unreviewed and unversed. The court said: “The existence of ultimate discretionary power here to review the cause on its merits and the deterrent influence which the refusal to file must have upon the practical exertion of that power in a case properly made gives the authority to consider the subject which the rule presents.”

b. Controlling Judicial Action or Discretion (p. 937)

Compelling judicial action.—Error of a federal District Court sitting in New York in ordering transferred to the equity side of the court a count in an action at law which claimed damages for breach of a contract to bequeath a specified sum, was corrected by the federal Supreme Court by granting mandamus to require the District Court to proceed and to give plaintiff the right to a trial at common law. *Matter of Simons*, (1918) 247 U. S. 231, 38 S. Ct. 497, 62 U. S. (L. ed.) 1094.

d. Enforcement of Judgment Generally (p. 943)

Mandamus a substitute for execution.—Where, after judgment against a county, the court, without objection, on petition, order to show cause, and answer, issued an execution, and the proceeding had every essential attribute of a proceeding in mandamus, and there was no issue of fact, the appellate court upon reversing the order for an execution as being prohibited by the state law, remanded the cause with directions to issue a mandamus against the county officers to pay the judgment, as the court would have had power to do and should have done instead of issuing an execution. *Clearwater County v. Pfeiffer*, (C. C. A. 8th Cir. 1916) 236 Fed. 183, 149 C. C. A. 373.

16. Warrant (p. 950)

In *Mitchell v. Dexter*, (C. C. A. 1st Cir. 1917) 244 Fed. 926, 157 C. C. A. 276, it was held that a federal District Court in Wisconsin had no power to issue a writ directed to the marshal for the district of Massachusetts for the arrest of a person in that state and his removal to the district of Wisconsin. The court said: "The Court of Appeals for the District of Columbia, in *Palmer v. Thompson*, 20 App. D. C. 273, expressly held that, in the absence of an act of Congress conferring the power, the federal court in one district had no authority in a criminal case to issue its writ to the marshal of another federal district, commanding him to arrest a person within his jurisdiction, but outside that of the court issuing the writ, and that such power was not conferred by section 716 of the Revised Statutes. What is said in *Re Christian*, (C. C.) 82 Fed. 885, as to the power of a court under this section of the statute, was disapproved by the Court of Appeals in the *Palmer Case*, and we do not regard it as authority upon the proposition here in question."

Vol. V, p. 959, Jud. Code, sec. 265.

I. Construction and application.

1. Generally.

III. Protection of federal jurisdiction.

5. Injunction as aid in enforcement of federal decree.

V. Other particular matters and proceedings.

I. CONSTRUCTION AND APPLICATION

1. Generally (p. 959)

The object of the statute.—"The purpose of section 265 . . . being to prevent unseemly conflict between state and federal courts, the statute should be given such an interpretation as will effectuate its obvious purpose. *American Assn. v. Hurst*, 59 Fed. 1, 7 C. C. A. 598, 16 U. S. App. 325; *American Shipbuilding Co. v. Whitney*, 190 Fed. 109." *Hyattsville Bldg. Ass'n v. Bouie*, (1916) 44 App. Cas. (D. C.) 408.

"Generally speaking, the term 'proceeding' means a prescribed course of action for enforcing a legal right, and hence it necessarily embraces the requisite steps by which judicial action is involved. It is a very comprehensive term." *Hyattsville Bldg. Ass'n v. Bouie*, (1916) 44 App. Cas. (D. C.) 408.

Courts included.—"The supreme court of the District of Columbia is a court of the United States, and hence within the purview of this section. D. C. Code, sec. 61 [31 Stat. at L. 1199, chap. 854]; *James v. United States*, 202 U. S. 401, 50 L. ed. 1079, 26 Sup. Ct. Rep. 685. Because, as pointed out in *United States v. Baltimore & O. R. Co.*, 26 App. D. C. 581, that court exercises the jurisdiction elsewhere exercised by State and Federal courts, it is none the less a court of the United States within the meaning of the above provision of the Judicial Code. The declaration of policy contained in that provision is all-embracing, and includes all courts of the United States. *Dial v. Reynolds*, 96 U. S. 340, 24 L. ed. 644; *Sargent v. Helton*, 115 U. S. 348, 29 L. ed. 412, 6 Supp. Ct. Rep. 78; *United States v. Parkhurst-Davis Mercantile Co.*, 176 U. S. 317, 44 L. ed. 485, 20 Sup. Ct. Rep. 423. We therefore are clearly of the opinion that under the provisions of this statute the supreme court of the District of Columbia is prohibited from issuing an injunction to stay proceedings in a state court, except under the bankruptcy act." *Hyattsville Bldg. Ass'n v. Bouie*, (1916) 44 App. Cas. (D. C.) 408.

1. I. PROTECTION OF FEDERAL JURISDICTION

5. Injunction as Aid in Enforcement of Federal Decree (p. 967)

In *Swift v. Black Panther Oil, etc., Co.*, (C. C. A. 8th Cir. 1917) 244 Fed. 20, 156 C. C. A. 448, the court referred to "Diggs

& *Keith v. Wolcott*, 4 Cranch 179, 2 U. S. (L. ed.) 587; *Peck v. Jenness*, 7 How. 612, 623, 624, 625, 12 U. S. (L. ed.) 841; *Haines v. Carpenter*, 91 U. S. 254, 23 U. S. (L. ed.) 345; *Whitney v. Wilder*, 54 Fed. 554, 4 C. C. A. 510, and other cases of like character wherein the state court first acquired jurisdiction of the subject-matter in controversy," and continued as follows: "In cases of this class this act of Congress undoubtedly controls, and the federal courts may not interfere by injunction or otherwise with the proceedings of the state courts which have first acquired jurisdiction of the subject-matter. But it is equally true that in a case in which a federal court first obtains jurisdiction of the subject-matter in controversy, and where it acts in aid of its own jurisdiction to render its orders or decrees, or the title or disposition under them of the property within that jurisdiction, effectual, it may, notwithstanding section 720, Revised Statutes, now section 265 of the Judicial Code, enjoin or restrain all proceedings in the state court which would have the effect of defeating or impairing its jurisdiction, or the orders, decrees, or titles it has made or is making in the exercise thereof. *Sharon v. Terry*, (C. C.) 36 Fed. 337; *French v. Hay*, 22 Wall. 250, note, 22 L. Ed. 857; *Dietzsch v. Huidekoper*, 103 U. S. 494, 26 L. Ed. 497; *Julian v. Central Trust Company*, 193 U. S. 93, 112, 24 Sup. Ct. 399, 48 L. Ed. 629; *Starr v. Chicago, Rock Island & P. Ry. Co.* (C. C.) 110 Fed. 3, 6; *Prout v. Starr*, 188 U. S. 537, 23 Sup. Ct. 398, 47 L. Ed. 584; *Lang v. Choctaw, Oklahoma & Gulf R. Co.*, 160 Fed. 355, 359, 360, 87 C. C. A. 307, 311, 312; *Kansas City Gas Co. v. Kansas City* (D. C.) 198 Fed. 500, 526; *Guardian Trust Co. v. Kansas City Southern Ry. Co.*, 171 Fed. 43, 49, 96 C. C. A. 285, 291, 28 L. R. A. (N. S.) 620; *Western Union Tel. Co. v. U. S. & Mexican Trust Co.*, 221 Fed. 545, 553, 137 C. C. A. 113, 121; *McKinney v. Landon*, 209 Fed. 300, 305, 306, 126 C. C. A. 226, 231, 232. The law upon this subject has been repeatedly declared by the Supreme Court and by this court." The court then quoted the rule as stated in *Lang v. Choctaw*, etc., *R. Co.*, (C. C. A. 8th Cir. 1908) 160 Fed. 355, 359, 360, 87 C. C. A. 307, 311, 312.

V. OTHER PARTICULAR MATTERS AND PROCEEDINGS (p. 976)

Foreclosure proceedings.—In *Hyattsville Bldg. Ass'n v. Bouic*, (1916) 44 App. Cas. (D. C.) 408, after the alleged default of appellee mortgagee of Maryland real estate, the appellant mortgagor instituted in the state Circuit Court a statutory proceeding for foreclosure and advertised the property for sale in accordance with the state statutes. Before the sale took place

appellee filed his bill in the District of Columbia Supreme Court, and obtained a temporary restraining order, which, upon a later hearing, was continued and an appeal granted. The decree was reversed with directions to dismiss the bill, as being one to enjoin "proceedings," etc., and in violation of Judicial Code, sec. 265. The court said: "Appellants had taken the initial steps provided by the Maryland statutes for the foreclosure of their mortgage, thereby setting in motion the machinery of the law in that jurisdiction. Inasmuch as the statute requires report of a sale to a court, it is not material that proceedings are ex parte up to that point. The court then has sole jurisdiction to determine the rights of the parties, and affirmative action by the court is necessary to give validity to the sale. Viewing the statute as a whole, in the light of its interpretation by the court of appeals of Maryland, we are unable to escape the conclusion that proceedings thereunder may not be stayed by a court of the United States except under the bankruptcy act."

Proceedings in Probate Court.—In *Smith v. Jennings*, (C. C. A. 5th Cir. 1915) 238 Fed. 48, 151 C. C. A. 124, holding that the federal District Court had no power to set aside the appointment of temporary administrators of a decedent's estate, alleged to have been obtained by fraud of the parties, and to enjoin said administrators from interfering with the receivers, the court said: "The federal courts have no authority to stay proceedings of state courts, while they are in progress and before they are concluded by final judgment or decree, except in aid of bankruptcy proceedings or of their own previously acquired jurisdiction."

VOL. V, p. 983, JUD. CODE, SEC. 266.

II. Power of court and single judge.

IV. Application generally.

V. Appeal and effect of appeal.

II. POWER OF COURT AND SINGLE JUDGE (p. 985)

Three judges necessary.—In *Crescent Mfg. Co. v. Wilson*, (C. C. A. 2d Cir. 1917) 242 Fed. 462, 155 C. C. A. 238, dismissing an appeal from an order denying an interlocutory injunction, the court said: "The question presented to the court below was whether the commissioner of agriculture of the state of New York should be restrained from carrying out and enforcing a threatened course of action having for its object the prevention of sales within the state of mapleine after its importation into New York from the state of Washington; mapleine being a

food product manufactured and sold in the latter state and extensively transported in interstate commerce. Stated in another way, the question was whether the New York Agricultural Law (chapter 494, Laws of 1914), entitled 'An act to amend the Agricultural Law, in relation to adulterated or misbranded food,' is unconstitutional, as being in conflict with the provisions of section 8 of article 1 of the Constitution of the United States, as constituting an undue interference with interstate commerce. The District Judge held the New York law constitutional, as not being in conflict with federal law. From this decision an appeal has been taken. The case has been argued in this court, and we shall have to dispose of it upon a point not raised in argument. It appears that the District Judge was without jurisdiction to hear and determine the application for the interlocutory injunction. A court of the United States composed of one judge only is without power to hear and determine such an application. . . . It was not within the power of a single justice or judge to pass on the question whether the New York law violated the Constitution of the United States. When application for the injunction was presented to the District Judge it was incumbent upon him to call to his assistance two other judges, one of whom should be a Justice of the Supreme Court or a Circuit Judge, to hear and determine the application. And it was also his duty to give notice of the hearing to the Governor and Attorney General, as well as to such other persons as may be defendants in the suit. This course was not pursued, but the District Judge proceeded to hear and determine the question sitting alone."

The presence of three judges is necessary at a hearing on a bill to enjoin enforcement by state officers of provisions in a state statute on the ground of their conflict with the federal Constitution. *Hebe Co. v. Calvert*, (S. D. Ohio 1917) 246 Fed. 711.

IV. APPLICATION GENERALLY (p. 988)

Holding that the court had jurisdiction of a bill to enjoin prosecutions by state officers to enforce provisions of an alleged unconstitutional statute forbidding the sale of certain food products, the court said: "If the threatened acts of the defendants are in excess of the authority vested in them by law, an action to enjoin them is within the jurisdiction of a federal court, both diverse citizenship and the necessary jurisdictional amount being present." *Hebe Co. v. Calvert*, (S. D. Ohio 1917) 246 Fed. 711.

The phrase "unconstitutionality of such statute" refers to the federal Constitution and does not include unconstitutionality as regards the state constitution. *Cook v. Burnquist*, (D. C. Minn. 1917)

242 Fed. 321, holding that it was not necessary that the hearing be had before three judges where, although the bill alleged as one of the grounds for relief that the statute violated the federal Constitution, counsel for the plaintiff at the commencement of the argument of the motion for a preliminary injunction, stated that the plaintiff sought the injunction only on the other grounds alleged in the bill that the statute violated the state constitution.

Jurisdiction of the District Court was sustained under this section in an action against state officers to enjoin enforcement of a statute violating the federal Constitution in the imposition of permit and franchise taxes on a foreign corporation. *Looney v. Crane Co.*, (1917) 245 U. S. 178, 38 S. Ct. 85, 62 U. S. (L. ed.) 230.

V. APPEAL AND EFFECT OF APPEAL (p. 988)

A temporary injunction against a state officer which a federal District Court, having first acquired jurisdiction over the parties and subject-matter of a suit, granted for the purpose of protecting and preserving that jurisdiction until the object of the suit should be accomplished and complete justice be done between the parties, is not an order from which an appeal may be taken to the federal Supreme Court under this section. *Looney v. Eastern Texas R. Co.*, (1918) 247 U. S. 214, 38 S. Ct. 460, 62 U. S. (L. ed.) 1084.

Appeal from an order of a single judge denying an interlocutory injunction in a case within this section is not authorized, and such appeal should be dismissed. *Crescent Mfg. Co. v. Wilson*, (C. C. A. 2d Cir. 1917) 242 Fed. 462, 155 C. C. A. 238.

Appeal to Circuit Court of Appeals.—Although this section provides for an appeal direct to the Supreme Court, an appeal may be taken to the Circuit Court of Appeals where the jurisdiction of the District Court rests not alone upon the allegation that a law violates the federal Constitution, but also upon the ground of diverse citizenship of the parties. *Crescent Mfg. Co. v. Wilson*, (C. C. A. 2d Cir. 1917) 242 Fed. 462, 155 C. C. A. 238.

Appeal to Circuit Court of Appeals excluded.—A principle frequently applied in construing general and special statutes prescribing the jurisdiction of courts is considered in the article **STATUTES AND STATUTORY CONSTRUCTION**, vol. I, of this work, p. 164, under the heading "Special and general statutes on same subject," and was applied in *Jackson v. Cravens*, (C. C. A. 5th Cir. 1916) 238 Fed. 117, 151 C. C. A. 193, holding that an appeal from an order denying an interlocutory injunction in a case covered by this section and heard by three judges, can be taken only to the Supreme Court and not to the Circuit Court of Appeals.

Jurisdiction to review the whole case was acquired by the Supreme Court on appeal from an order which, while enjoining the enforcement of fines and penalties prescribed by a state statute for failure to obey an order of a Corporation Commission regulating water rates, refused to interfere with the enforcement of such order. *Van Dyke v. Geary*, (1917) 244 U. S. 39, 37 S. Ct. 483, 61 U. S. (L. ed.) 973.

Repeal of obnoxious state statute pending appeal.—In *Berry v. Davis*, (1917) 242 U. S. 468, 37 S. Ct. 208, 61 U. S. (L. ed.) 441, the Supreme Court reversed a decree and directed the bill to be dismissed without costs to either party, the court saying: "This is a bill to enjoin the State Board of Parole and the warden and physician of the state penitentiary at Fort Madison from performing vasectomy upon the plaintiff, the defendant in error, in pursuance of an Iowa statute approved April 19, 1913. 35 G. A. chap. 187, § 1. Supplement to Code 1913, chap. 19-B, § 2600-p. This act, among other things, directed the operation to be performed upon convicts in the penitentiary who had been twice convicted of felony, and on February 14, 1914, the board had ordered it, upon the ground that the plaintiff had been twice so convicted. The bill was filed on March 11, 1914. On April 15, 1914, following an opinion of the Attorney General that both felonies must have been committed after the passage of the act, the order was laid on the table, and the warden and physician made affidavits, filed on April 22, that the operation would not be performed by them. Nevertheless, three judges, disregarding the foregoing opinion and action, proceeded to issue a preliminary injunction as prayed in the bill. 216 Fed. 413. An appeal was taken to this court in 1914. In 1915 the Act of 1913 was repealed, and the substituted act does not apply to the plaintiff. Supplemental Supplement to the Code of Iowa, 1915, chap. 19-B, § 2600-s1. All possibility or threat of the operation has disappeared now. If not before, by the act of the state. Therefore, upon the precedents we are not called upon to consider the propriety of the action of the district court, but the proper course is to reverse the decree and remand the cause, with directions that the bill be dismissed without costs to either party. *United States v. Hamburg-Amerikanische Packetfahrt-Actien Gesellschaft*, 239 U. S. 466, 475, 478, 60 L. ed. 387, 391, 392, 36 Sup. Ct. Rep. 212; *Jones v. Montague*, 194 U. S. 147, 153, 48 L. ed. 913, 915, 24 Sup. Ct. Rep. 611; *Dinsmore v. Southern Exp. Co.*, 183 U. S. 115, 120, 46 L. ed. 111, 113, 22 Sup. Ct. Rep. 45; *Mills v. Green*, 159 U. S. 651, 658, 40 L. ed. 293, 295, 16 Sup. Ct. Rep. 132.

Vol. V, p. 989, Jud. Code, sec. 267.

IV. Remedy at law.

3. Inadequacy of remedy at law as ground for equitable relief.

VI. Application of rules in particular matters and proceedings.

1. Accounting.

11. Damages generally.

IV. REMEDY AT LAW

3. *Inadequacy of Remedy at Law as Ground for Equitable Relief* (p. 998)

Inadequacy of legal remedy.—In a suit by several patrons of an interstate telephone company, suing in behalf of themselves and all others similarly situated, praying that the company be required to repair its plants, lines, etc., and to observe its duties and obligations as an interstate carrier and as a public utility under the several acts of Congress and its contracts, alleging that the company had suffered its facilities to become so greatly out of repair that it was impossible for complainants to obtain and have the service for which they pay, it was contended that each of the complainants might find relief through appeal to the Interstate Commerce Commission, or through appeal to the state Utilities Board, or in an action for damages, or by an action in mandamus, but the court, upon consideration of each of the suggested remedies, in view of the facts of the case, held that the futility of a resort to either remedy was so plain as to warrant the interposition of a court of equity. *Stephens v. Ohio State Telephone Co.*, (N. D. Ohio 1917) 240 Fed. 759.

VI. APPLICATION OF RULES IN PARTICULAR MATTERS AND PROCEEDINGS

1. *Accounting* (p. 1001)

A prayer for an accounting in a bill in equity will not give the court jurisdiction where the plaintiff's asserted claims are legal rights, and it does not appear that the plaintiff has not a plain, adequate, and complete remedy at law. *National Surety Co. v. Washington Iron Works*, (W. D. Wash. 1917) 243 Fed. 260.

11. *Damages Generally* (p. 1004)

In *Northern Pac. R. Co. v. Van Dusen Harrington Co.*, (C. C. A. 8th Cir. 1917) 245 Fed. 454, 157 C. C. A. 616, L. R. A. 1918C 883, it was held that there was no jurisdiction in equity of a bill by the owner of a car load of wheat to compel an interstate railroad company to issue to the plaintiff a bill of lading for transportation of the car to a place on a connecting line in another state, as an action at law for damages would afford a complete and adequate remedy and besides, according to plaintiff's theory, he could

obtain a writ of mandamus to compel issuance of such bill of lading under section 23 of the Interstate Commerce Act, and if so, this would be an adequate remedy at law.

Vol. V, p. 1009, Jud. Code, sec. 268.

I. Construction.

2. Particular phrases and words.

IV. Particular acts or conduct as contempt.

12. Newspaper articles.

VII. Proceedings to punish for contempt.

1. Nature of proceedings.

5. Defenses.

VIII. Punishment.

4. Fines.

XI. Review.

I. CONSTRUCTION

2. Particular Phrases and Words (p. 1011)

"So near thereto," etc.—This section was not intended to limit the power of the court to punish for contempt to be exercised only for the purpose of insuring order and decorum in its presence. "Like the law of constructive presence in criminal cases, the misbehavior is committed where it takes effect," and publication of a newspaper article calculated to influence jurors in a pending trial may constitute a contempt. *In re Independent Pub. Co.*, (C. C. A. 9th Cir. 1917) 240 Fed. 849, 153 C. C. A. 535, L. R. A. 1917E 703.

IV. PARTICULAR ACTS OR CONDUCT AS CONTEMPTS

12. Newspaper Articles (p. 1024)

In general.—"That the publication by a newspaper of the city in which a court is sitting of an article tending to obstruct the administration of justice in proceedings pending in that court is within section 268 of the Judicial Code is so well settled as to require no discussion." *U. S. v. Providence Tribune Co.*, (R. I. 1917) 241 Fed. 524, citing *In re Independent Pub. Co.*, (D. C. Mont. 1915) 228 Fed. 787 (see also 240 Fed. 849, 153 C. C. A. 535, L. R. A. 1917E 703); *U. S. v. Toledo Newspaper Co.*, (D. C. Ohio 1915) 220 Fed. 458, 237 Fed. 986, 150 C. C. A. 636; *U. S. v. Huff*, (D. C. Ga. 1913) 206 Fed. 700.

Judicial authority summarily to punish as for a criminal contempt the publication in a newspaper of articles and cartoons having reference to pending judicial action which tended and were intended to provoke public resistance to an injunction order, should one be made, and amounted to an attempt unduly to influence the judge with reference to his decision in the matter pending before him, was recognized and sanctioned, not negated, by the provisions of this section. *Toledo Newspaper Co. v. U. S.*, (1918) 247 U. S. 402, 38 S. Ct. 1186, 62 U. S. (L. ed.) 560.

Comment and cartoons having reference to pending judicial action, published at the place where the proceedings were pending, in a daily newspaper with a large circulation, may fairly be said to "obstruct the administration of justice," within the meaning of this section where such is the reasonable tendency of such publications, although it is not shown that the newspapers containing them were seen by the judge or were circulated in the court room, and although there is no proof that the mind of the judge in the particular case was influenced, or his purpose to do his duty obstructed or restrained, by the publications. *Toledo Newspaper Co. v. U. S.*, (1918) 247 U. S. 402, 38 S. Ct. 560, 62 U. S. (L. ed.) 1186.

In *In re Independent Pub. Co.*, (C. C. A. 9th Cir. 1917) 240 Fed. 849, 153 C. C. A. 535, L. R. A. 1917E 703, while a criminal case was on trial before a jury in Helena, Mont., a daily newspaper in the city printed an article for which an information for contempt was brought against it and its editor and manager. The information charged that this article was not based upon the facts introduced in evidence on the trial of the case, but was written and published for the purpose of giving to the public generally, and to all persons who should read said newspaper and the said article, certain facts relating to the past life of the defendant, and to inform the jury, and the members thereof who might read the newspaper and the article, of certain facts concerning the defendant which were highly prejudicial to his character and reputation, and would, when read by the jury, or any member thereof, tend to bias and prejudice them against the defendant and prevent the jury, and the members thereof who had read the article, from giving the defendant a fair and impartial trial, for the reason that it brought to their attention certain facts concerning the life of the defendant which were not material to the issues of the cause, and could not be proven on the trial of the cause against the defendant unless on the trial of the cause he had taken the witness stand in his own behalf, or placed his good character in issue. It was not denied that the publication obstructed the progress of the cause on trial, and compelled the court to discharge the jury, resulting, as the court found as a fact, in the infliction of pecuniary damages to the government, in costs uselessly incurred, amounting to \$617. It was held that the publication constituted a punishable contempt.

"Interference with the proceedings of a grand jury in the performance of its functions is as truly a contempt of court as is interference with the proceedings of a petit jury, either in the course of a trial or during its deliberation." *U. S. v. Provi-*

dence Tribune Co., (D. C. R. I. 1917) 241 Fed. 524, where the court denied a motion to dismiss an information for alleged contempt of court in the publication of newspaper article, set out in the report.

VII. PROCEEDINGS TO PUNISH FOR CONTEMPT

1. Nature of Proceedings (p. 1033)

Civil proceeding.—Upon examination and consideration of the proceeding for contempt for violation of an injunctive order involved in *Mitchell v. Dexter*, (C. C. A. 1st Cir. 1917) 244 Fed. 926, 157 C. C. A. 276, it was there held that the proceeding was civil in nature and not distinguishable in that behalf from *Gompers v. Buck Stove, etc., Co.*, (1910) 221 U. S. 418, 31 S. Ct. 492, 55 U. S. (L. ed.) 797, 34 L. R. A. (N. S.) 874.

5. Defenses (p. 1038)

For publication of an article in a newspaper constituting a contempt of court, it is within the power of the court to punish the managing editor, though he was ignorant of the contents of the article, where he failed to perform his duty in supervising the publication, and was negligent in permitting the article to be published. *In re Independent Pub. Co.*, (C. C. A. 9th Cir. 1917) 240 Fed. 849, 153 C. C. A. 535, L. R. A. 1917E 703.

VIII. PUNISHMENT

4. Fines (p. 1043)

Amount.—Where a newspaper article constituting a criminal contempt caused a mistrial and continuance of a criminal case, the costs to which the government was subjected by reason thereof were properly used as an element in measuring the fine imposed by the court. *In re Independent Pub. Co.*, (C. C. A. 9th Cir. 1917) 240 Fed. 849, 153 C. C. A. 535, L. R. A. 1917E 703.

XI. REVIEW (p. 1045)

On the facts.—The decision of the trial court on the facts is conclusive, and only matters of law are to be considered. *In re Independent Pub. Co.*, (C. C. A. 9th Cir. 1917) 240 Fed. 849, 153 C. C. A. 535, L. R. A. 1917E 703.

Vol. V, p. 1059, Jud. Code, sec. 274a.

Under Equity Rule 22 a suit brought on the equity side of the court, on the alleged ground of inadequate remedy at law, where the plaintiff's bill shows, however, that the suit is merely to recover a money judgment for breach of a simple contract, should be transferred to the law docket on motion of the defendant; and

a decree for the plaintiff was reversed with instructions so to transfer the case. *Edward Hines Lumber Co. v. Bowers*, (C. C. A. 5th Cir. 1917) 238 Fed. 782, 161 C. C. A. 632.

Vol. V, p. 1061, Jud. Code, sec. 274b.

A plaintiff in action at law may have equitable relief on a replication to a defense set up in the defendant's answer; for example, where, in an action for damages for personal injuries, the defendant pleads a release, the plaintiff may by replication set up fraud in obtaining the release and ask to have the release set aside. *Union Pac. R. Co. v. Syas*, (C. C. A. 8th Cir. 1917) 246 Fed. 561, 158 C. C. A. 531. ✓

Equitable issues to be tried separately.—In an action at law for damages for personal injuries, where the defendant pleaded a release, and the plaintiff filed a replication praying that the release be rescinded for fraud, it was reversible error for the court to submit to the jury with the issue at law the issue of fraud in obtaining the release for an advisory verdict on the latter issue, the verdict on the legal issue being made contingent on the result of the advisory verdict. The equitable issue should have been first tried by the court and not submitted to the same jury. *Union Pac. R. Co. v. Syas*, (C. C. A. 8th Cir. 1917) 246 Fed. 561, 158 C. C. A. 531. ✓

Review of judgment or decree.—In the case set forth in the last preceding paragraph, viz., *Union Pac. R. Co. v. Syas*, (C. C. A. 8th Cir. 1917) 246 Fed. 561, 158 C. C. A. 531, where the court, pursuant to the advisory verdict of the jury, set aside the release for fraud and rendered judgment on the verdict of the jury for damages, and the defendant brought up the case by writ of error and by appeal the court said it had adopted no rule as to how cases under Judicial Code, § 274b, shall be reviewed, but, in view of Act of Sept. 8, 1916, ch. 448, § 4, 39 Stat. L. 727, ante, this volume, p. 421, "it would seem to be immaterial whether the case was brought here by appeal or writ of error."

In the absence of a rule of court regulating the method of procedure, where there was a verdict and judgment for the defendant in an action at law, the Circuit Court of Appeals refused to dismiss plaintiff's appeal on the ground urged that he had mistaken his remedy, and held it to be unimportant whether the matters set up in an affirmative defense constituted an equitable defense or were properly tried and disposed of at law. *Maine Northwestern Development Co. v. Northwestern Commercial Co.*, (C. C. A. 9th Cir. 1917) 240 Fed. 583, 153 C. C. A. 387.

Vol. V, p. 1078, Jud. Code, sec. 287.

Joint indictments.—In *Schwartzberg v. U. S.*, (C. C. A. 2d Cir. 1917) 241 Fed. 348, 154 C. C. A. 228, affirming conviction of several of fourteen defendants jointly indicted and tried for a felony not treason or a capital offense, the court said: "When the 14 defendants were arraigned, they appeared by numerous counsel, who (presumably with the assent of their clients) refused to unite, or act jointly, in respect of choosing a jury. It is not denied, nor doubted, that, had they agreed to speak on this subject as one man, or through one attorney, they would collectively have been entitled to 10 peremptory challenges, and both the letter and spirit of the statute been satisfied. After the above-noted action, or refusal to act, on defendants' part, the trial judge announced that he would entertain one peremptory challenge for each defendant, or 14 in all, with the result that every defendant had one challenge (if their apparent differences were pressed to their limit), but 'the parties' defendant had collectively more challenges than the statute required. Thereupon some defendants peremptorily challenged more than once, and such efforts (not joined in by all) were disallowed."

Vol. V, p. 1084, Jud. Code, sec. 294.

See this section applied in *U. S. v. Cress*, (1917) 243 U. S. 316, 37 S. Ct. 380, 61 U. S. (L. ed.) 746, as cited in notes to Judicial Code, § 24, par. Twentieth, *supra*, p. 1097.

Judicial Code, § 129, should not receive a different construction from that which it had when originally enacted in the Circuit Court of Appeals Act of 1891. *Jackson v. Cravens*, (C. C. A. 5th Cir. 1916) 238 Fed. 117, 151 C. C. A. 193.

Vol. V, p. 1085, Jud. Code, sec. 295.

See this section applied in *U. S. v. Cress*, (1917) 243 U. S. 316, 37 S. Ct. 380, 61 U. S. (L. ed.) 746, as cited in notes to Judicial Code, § 24, par. Twentieth, *supra*, p. 1097.

Vol. V, p. 1105, Jud. Code, sec. 207.**I. JURISDICTION (p. 1106)**

Jurisdiction of state court.—"A state court would obviously have no jurisdiction" of a suit to enjoin, etc., an order of the Interstate Commerce Commission, in whole or in part, said the court in *American Express Co. v. South Dakota*. (1917) 244 U. S. 617, 37 S. Ct. 656, 61 U. S. (L.

ed.) 1352. But it was there held that the state Supreme Court had jurisdiction to enjoin express companies from advancing intrastate rates in noncompetitive territory, which the companies attempted to justify by an order of the Interstate Commerce Commission directing them to remove an existing discrimination against interstate commerce by ceasing to charge higher rates between Sioux City, Iowa, and South Dakota points than for substantially equal distances between such South Dakota points and five named South Dakota cities; and the decree of the state court was modified by dissolving the injunction so far as it extended to rates in the competitive territory.

II. POWER OF REVISION (p. 1107)

"Any order."—The federal District Court had no jurisdiction to cancel an order of the Interstate Commerce Commission fixing a hearing of certain complaints made by certain coal companies for damages for alleged failure to furnish cars upon demand, and permanently enjoining the Commission from further proceeding with the hearing of the complaints. *U. S. v. Illinois Cent. R. Co.*, (1917) 244 U. S. 82, 37 S. Ct. 584, 61 U. S. (L. ed.) 1007, on the ground that: "The alleged order was nothing more than notice of a hearing which the railroad company might attend or not, as it saw fit. The notice therefore had no characteristic of an order, affirmative or negative. It was a mere incident in the proceeding, the accident of the occasion,—in effect, and, it may be contended, in form, but a continuance of the hearing." This ruling was required by the reasoning of the court in *Procter, etc., Co. v. U. S.*, (1912) 225 U. S. 282, 32 S. Ct. 761, 56 U. S. (L. ed.) 1091.

The District Court was without jurisdiction to enjoin the enforcement of an order of the Interstate Commerce Commission refusing, on the ground of real or possible competition, to grant an extension of time for compliance with the provision of the Panama Canal Act of Aug. 24, 1912, ch. 390, § 11, in *INTERSTATE COMMERCE*, vol. IV, p. 404, which prohibited after July 1, 1914, any ownership by a railroad in any common carrier by water when the railroad might compete for traffic with the water carrier, and empowered the Commission to determine questions of fact as to such competition, and to extend the time if the extension would not exclude or reduce competition on the water route, since the order of the Commission was negative in substance as well as form, and the risk to which the railway company was left subject did not come from the order, but from the statute. *Lehigh Valley R. Co. v. U. S.*, (1917) 243 U. S. 412, 37 S. Ct. 397, 61 U. S. (L. ed.) 819.

Vol. V, p. 1108. [*Act of Oct. 22, 1913, ch. 32.*]

Venue of suits.—In *Illinois Cent. R. Co. v. Public Utilities Commission*, (1918) 245 U. S. 493, 38 S. Ct. 170, 62 U. S. (L. ed.) 425, it was held that a suit by carriers against the state authorities of Illinois to enjoin them from interfering, by civil or criminal proceedings, with the establishment and maintenance of certain interstate rates under an order of the Interstate Commerce Commission, was properly brought in the federal District Court for the northern district of Illinois. It was also held in the same case: "There was no statute making the United States or the Commission a necessary party to bills of that nature, nor was the relief sought such as to render the presence of either essential under the rules applicable to suits in equity. It well may be that either or both, if desiring to intervene, would have been permitted to do so, but there is no warrant for thinking that without their presence the bills could not be entertained."

Cross-bill.—But cross-bills in the suit described in the last preceding paragraph, assailing the validity of the Interstate Commerce Commission's order on various grounds, and concluding with a prayer that it be set aside and annulled and that the United States and the Commission be enjoined from enforcing it, and the carriers from complying with it, were not maintainable. *Illinois Cent. R. Co. v. Public Utilities Commission*, (1918) 245 U. S. 493, 38 S. Ct. 170, 62 U. S. (L. ed.) 425.

Objection to the venue is waived by filing motions to dismiss for want of equity. *McLean Lumber Co. v. U. S.*, (E. D. Tenn. 1916) 237 Fed. 460.

Vol. V, p. 1110, Jud. Code, sec. 208.

A state court has jurisdiction of an action by the state to compel corporations chartered by it to obey the orders, classifications, and regulations of the state railroad commission, none of which have been declared void by any court, and to restrain the defendants from charging other than said commission rates or applying other than the said commission's classification, as such suit is not to set aside, enjoin, suspend, or annul any order made by the Interstate Commerce Commission. *Abilene, etc., R. Co. v. State*, (Tex. Civ. App. 1918) 199 S. W. 878.

Discretion of court.—The court will not grant a temporary injunction unless there is irreparable injury to the complainants, and unless it can be granted without imposing irreparable injury upon some one else. *Brown Drug Co. v. U. S.*, (D. C. Ia. 1916) 235 Fed. 603.

Vol. V, p. 1112. [*Act of Oct. 22, 1913.*]

Hearing by three judges—Determination of merits.—In *Louisville, etc., R. Co. v. U. S.*, (D. C. Tenn. 1915) 227 Fed. 258, the three judges denied a motion for an interlocutory injunction, and at the same time sustained the motions of the United States and of the Commission to dismiss the petition; the latter "being a matter within the authority of the three judges now composing the court, under the provision of the Act of 1913, relating to the final hearing before three judges of any suit brought to suspend or set aside an order of the Commission; the hearing of a motion to dismiss a petition for want of equity being, in our opinion, a final hearing within the meaning of such provision."

But in *Brown Drug Co. v. U. S.*, (D. C. Ia. 1916) 235 Fed. 603, it was decided by a majority of the three judges convened to hear the application for a temporary injunction that they had no power to hear and determine a motion to dismiss the petition upon its merits, and that such motion must be submitted to the district judge alone and be determined by him. Smith, J., said: "If the motion had been filed before the application had been made, there would be no pretense that these three judges should sit to hear that question."

Vol. V, p. 1123, sec. 721.**I. General rules and principles.****5. Questions of unwritten or common law.****b. Present rule.****6. Constitutional and statutory questions generally.****a. General rule stated.****7. Decisions of intermediate appellate and lower courts.****II. Application of rules to particular subjects.****7. Contracts generally.****I. GENERAL RULES AND PRINCIPLES****5. Questions of Unwritten or Common Law****b. Present Rule (p. 1129)**

In general.—In *Sim v. Edenborn*, (1916) 242 U. S. 131, 37 S. Ct. 36, 61 U. S. (L. ed.) 199, the court said: "This court has many times considered how far Federal tribunals, when undertaking to enforce laws of the states, should follow opinions of their courts. The authorities were reviewed and rule announced in *Burgess v. Seligman*, 107 U. S. 20, 33-35, 27 L. ed. 359, 365, 366, 2 Sup. Ct. Rep. 10, which declared that, as to doctrines of commercial law and general jurisprudence, the

former exercise their own judgment, 'but even in such cases, for the sake of harmony and to avoid confusion, the Federal courts will lean towards an agreement of views with the state courts, if the question seems to them balanced with doubt.' This has been often reaffirmed. *Wilson v. Standefer*, 184 U. S. 399, 412, 46 L. ed. 612, 618, 22 Sup. Ct. Rep. 384; *Bienville Water Supply Co. v. Mobile*, 186 U. S. 212, 220, 46 L. ed. 1132, 1135, 22 Sup. Ct. Rep. 820; *Stanly County v. Coler*, 190 U. S. 437, 444, 445, 47 L. ed. 1126, 1131, 1132, 23 Sup. Ct. Rep. 811; *Great Southern Fire Proof Hotel Co. v. Jones*, 193 U. S. 532, 547; 48 L. ed. 778, 786, 24 Sup. Ct. Rep. 576; *Tampa Waterworks Co. v. Tampa*, 199 U. S. 241, 243, 244, 50 L. ed. 172-174, 26 Sup. Ct. Rep. 23; *Kuhn v. Fairmont Coal Co.* 215 U. S. 349, 357-361, 54 L. ed. 228, 233-235, 30 Sup. Ct. Rep. 140; *Ennis Waterworks v. Ennis*, 233 U. S. 652, 657, 658, 58 L. ed. 1139-1141, 34 Sup. Ct. Rep. 767; *Moore-Mansfield Constr. Co. v. Electrical Installation Co.* 234 U. S. 619, 625, 58 L. ed. 1503, 1505, 34 Sup. Ct. Rep. 941; *Lankford v. Platte Iron Works Co.* 235 U. S. 461, 474, 59 L. ed. 316, 320, 35 Sup. Ct. Rep. 173."

6. Constitutional and Statutory Questions Generally

a. General Rule Stated (p. 1133)

On writ of error to a state court, the decision of the latter that a municipal ordinance is not repugnant to the state constitution settles the question for the federal Supreme Court. *Thomas Cusack Co. v. Chicago*, (1917) 242 U. S. 526, 37 S. Ct. 190, 61 U. S. (L. ed.) 472, Ann. Cas. 1917C 594, L. R. A. 1918A 136.

7. Decisions of Intermediate Appellate and Lower Courts (p. 1148)

A ruling of the New Jersey Supreme Court that a child less than seven years of age was within the purview of the provision of N. J. General Railroad Law, § 55, that if "any person" shall be injured by an engine or car "while walking, standing or playing on any railroad" (except at a lawful crossing), he shall be deemed to have contributed to the injury sustained and shall not recover therefor any damages from the railway company, should be followed by the federal courts, in the absence of any decision of the highest court of that state holding otherwise. The court said: "In view of the importance of that tribunal in New Jersey, although not the highest court in the state, we see no reason why it should not be followed by the courts of the United States, even if we thought its decision more doubtful than we do." *Erie R. Co. v. Hilt*, 247 U. S. 97, 38 S. Ct. 435, 62 U. S. (L. ed.) 1003.

II. APPLICATION OF RULES TO PARTICULAR SUBJECTS

7. Contracts Generally (p. 1163)

Restoration of status quo as condition of rescission.—See *Sim v. Edenborn*, (1916) 242 U. S. 131, 37 S. Ct. 36, 61 U. S. (L. ed.) 199, reversing a judgment of the Circuit Court of Appeals, and holding that the decision of the New York Court of Appeals should have been followed.

Vol. VI, p. 21, sec. 914.

V. Applicability in particular instances.

1. Amendments.

24. Judgments and proceedings subsequent thereto.

f. Methods of review.

h. Remedies on appeal or supersedeas bonds.

49. Writs and process.

b. Mode and sufficiency of service.

d. On foreign corporations

V. APPLICABILITY IN PARTICULAR INSTANCES

1. Amendments (p. 32)

A writ of *scire facias* to enforce a forfeited bail bond may be amended so as to show the jurisdictional fact (assuming it to be jurisdictional), which did not appear of record, that the offender was bailed by one qualified to admit to bail, where such amendment would be allowable under the state statutes. *Ewing v. U. S.*, (C. C. A. 6th Cir. 1917) 240 Fed. 241, 153 C. C. A. 167.

24. Judgments and Proceedings Subsequent Thereto

f. Methods of Review (p. 45)

Appellate procedure in federal courts is "regulated exclusively by federal statutes and decisions, unaffected by statutes of the states." *U. S. v. Jack*, (1917) 244 U. S. 397, 37 S. Ct. 605, 61 U. S. (L. ed.) 1222.

h. Remedies on Appeal or Supersedeas Bonds (p. 46)

The practice of rendering a summary judgment against sureties on an appeal bond, upon affirmance of the decree appealed from, has been introduced by statute in many states, and this practice is followed by the federal courts in actions at law. Although the adoption of state procedure is not obligatory upon the federal courts when sitting in equity, they have frequently rendered summary judgment against sureties on appeal bonds. *Pease v. Rathbun-Jones Engineering Co.*, (1917) 243 U. S. 273, 37 S. Ct. 283, 61 U. S. (L. ed.) 715, Ann. Cas. 1918C 1147.

49. Writs and Process

b. Mode and Sufficiency of Service
(p. 61)

A motion to quash a summons served upon a foreign corporation not doing business in the state was a proper mode of challenging jurisdiction, notwithstanding the objection could have been taken under the local law only by demurrer. *Meisukas v. Greenough Red Ash Coal Co.*, (1917) 244 U. S. 54, 37 S. Ct. 593, 61 U. S. (L. ed.) 987.

d. On Foreign Corporations (p. 62)

In general.—“A service in an action at law on a foreign corporation in conformity to a state statute is good in the federal courts, unless the notice thus provided is not adequate according to the rules of due process of law.” *Beach v. Kerr Turbine Co.*, (N. D. Ohio 1917) 243 Fed. 706.

Vol. VI, p. 64, sec. 915.

II. JURISDICTION

Personal service or appearance.—This section, “as has been authoritatively decided, permits the issue and levy of an attachment in an action begun here only in aid of an action in which personal service has been or can be made on the defendant.” *Cleveland, etc., Coal Co. v. J. H. Hillman, etc., Co.*, (N. D. Ohio 1917) 245 Fed. 200.

Suits removed from state courts.—In *Cleveland, etc., Coal Co. v. J. H. Hillman, etc., Co.*, (N. D. Ohio 1917) 245 Fed. 200, granting defendant's motion to discharge an attachment and striking plaintiff's petition from the files, the court said: “This action was begun in the court of common pleas, Cuyahoga county, and was removed to this court by the defendant, a foreign corporation. No process was served personally on the defendant, but plaintiff had sought to obtain jurisdiction in the state court by filing an affidavit and procuring the issue of an order of attachment, which was levied on the property of the defendant. After removal here, the defendant corporation, appearing specially for the purpose, moved to discharge the attachment, because no sufficient affidavit had been filed in the state court authorizing the issue of the order of attachment. This motion was at a former day of this term sustained, and the attachment was discharged. Thereafter the plaintiff filed in this court an affidavit, sufficient under the state law, and obtained the issue of an order of attachment, which has been duly levied on property of the defendant. No other process has issued from this court, and no personal service on the defendant has been made. In this state of the rec-

ord, defendant again appears specially for the purpose, and moves to discharge this attachment.”

Vol. VI, p. 70, sec. 916.

II. REMEDIES UNDER STATE LAWS (p. 71)

Where a state statute prohibited issuance of an execution on a judgment against a county except as therein provided, the issuance and levy of an execution contrary to the statute is ineffective. *Clearwater County v. Pfeffer*, (C. C. A. 8th Cir. 1916) 236 Fed. 183, 149 C. C. A. 373.

Vol. VI, p. 98, sec. 954.

VIII. PLEADINGS

g. Particular Actions or Proceedings
(p. 108)

A writ of scire facias to enforce a forfeited bail bond may be amended so as to show the jurisdictional fact (assuming it be jurisdictional), which did not appear of record, that the offender was bailed by one qualified to admit to bail. *Ewing v. U. S.*, (C. C. A. 6th Cir. 1917) 240 Fed. 241, 153 C. C. A. 167.

XI. FIERI FACIAS (p. 111)

Where, after judgment against a county, the court, without objection, on petition, order to show cause, and answer, issued an execution, and the proceeding had every essential attribute of a proceeding in mandamus, and there was no issue of fact, the appeal court, upon reversing the order for an execution as being prohibited by the state law, remanded the cause with directions to issue a mandamus against the county officers to pay the judgment, as the court would have had power to do and should have done instead of issuing an execution. *Clearwater County v. Pfeffer*, (C. C. A. 8th Cir. 1916) 236 Fed. 183, 149 C. C. A. 373.

Vol. VI, p. 140, sec. 18.

No security need be required upon granting an interlocutory injunction as a method of protecting its jurisdiction, orders, and titles from unlawful impairment, and where such injunction may be regarded as in lieu of proceedings for contempt of the court. *Swift v. Black Panther Oil, etc., Co.*, (C. C. A. 8th Cir. 1917) 244 Fed. 20, 156 C. C. A. 448.

Vol. VI, p. 140, sec. 19.

“Specific in terms” and “in reasonable detail.”—In a suit against an interstate telephone company by patrons of the company to compel the company to repair its lines, etc., and perform its duty to and contracts with the plaintiffs, it was held

that an order was not obnoxious to this section which substantially followed the prayer of the bill and concluded by enjoining all persons whatsoever "from doing any acts or things which may interfere in any respect with the performance of the duties and obligations of the defendant company as a common carrier." *Stephens v. Ohio State Telephone Co.*, (N. D. Ohio 1917) 240 Fed. 759, where the court said: "The public interest in the company's public service is the first consideration. . . . This provision is as definite as it is possible to make it. It is this paramount interest in the public which may not suffer interference as the result of the controversy, and it is impossible to set out every act or line of conduct which might work interference."

Vol. VI, p. 141, sec. 20.

"Case between an employer and employees."—In a suit against an interstate telephone company by patrons of the company to compel the company to repair its lines and other facilities so as to enable the plaintiffs to enjoy their rights, it was assumed by the court, "it being understood, of course, that the court is not deciding the point," that the power to issue an injunction restraining the defendant's striking employees from interfering with the company's cables, or with their repair or with employees repairing them, would be subject to the limitations of this section 20 of the Clayton Act. *Stephens v. Ohio State Telephone Co.*, (N. D. Ohio 1917) 240 Fed. 759.

"No adequate remedy at law."—See *Stephens v. Ohio State Telephone Co.*, (N. D. Ohio 1917) 240 Fed. 759, as cited in notes to vol. V, p. 989, Jud. Code, § 267, *supra*, p. 1144.

"Lawful," "lawfully," "peaceful," "peacefully."—These words were emphasized by the court in holding that in a suit by patrons of an interstate telephone company to compel the defendant to repair its lines, etc., the following provision in an order following the prayer of the bill was aimed to prevent unlawful acts and acts not peaceful, and was therefore not in excess of the court's power as limited in this section: "It is further ordered, adjudged, and decreed that the defendant company, its officers, agents, servants, and employes, those in concert or participating with them, and all persons whatsoever, and particularly all persons having notice of this order, be and are hereby enjoined and restrained from interfering in any way, or in any manner, with the cables hereinbefore enumerated, or with the repair of said cables, or with workmen engaged in repairing said cables, or with employes of defendant company when in the company's service; and all said persons and parties are enjoined and

restrained from doing any acts or things which may interfere in any respect with the performance of the duties and obligations of the defendant company as a common carrier."

Vol. VI, p. 145, sec. 2.

An appeal, and not a writ of error, was the proper appellate proceeding to review in the Circuit Court of Appeals a judgment of the Porto Rico Supreme Court reversing a judgment of dismissal by the District Court and rendering judgment in accordance with the prayers of the complaint enjoining the defendant railroad company from further operation of its railroad upon plaintiff's lands and ordering removal of the tracks therefrom. *Plazuela Sugar Co. v. Pastoriza*, (C. C. A. 1st Cir. 1917) 245 Fed. 115, 157 C. C. A. 411.

Where the instructions of the court are not in the record and the appellate tribunal is, therefore, not informed as to their character, it must assume that the instructions were given with proper and sufficient statement of the law applicable thereto. *Inter-Island Steam Nav. Co. v. Ward*, (C. C. A. 9th Cir. 1916) 232 Fed. 809, 147 C. C. A. 3.

Further review by Supreme Court.—See *Inter-Island Steam Nav. Co. v. Ward*, (1916) 242 U. S. 1, 37 S. Ct. 1, 61 U. S. (L. ed.) 113, as cited in notes to Judicial Code, sec. 246, *supra*, p. 1138.

Vol. VI, p. 149. [Act of March 2, 1907.]

II. CONSTRUCTION AND APPLICATION GENERALLY (p. 150)

"Of course the quashing of a bad indictment is no bar to a prosecution upon a good one." *U. S. v. Oppenheimer*, (1916) 242 U. S. 85, 37 S. Ct. 68, 61 U. S. (L. ed.) 161.

V. SPECIAL PLEAS IN BAR (p. 152)

Invalidity or construction of the statute need not be a ground of the special plea in bar. *U. S. v. Oppenheimer*, (1916) 242 U. S. 85, 37 S. Ct. 68, 61 U. S. (L. ed.) 161, holding that where the defendant set up a former adjudication on a prior indictment for the same offense that it was barred by the statute of limitations, a judgment quashing the present indictment on that ground was reviewable under this Act.

A so-called motion to quash, setting up a previous adjudication upon a former indictment for the same offense that it was barred by the statute of limitations was

in substance a plea in bar, and a judgment granting the motion and discharging the defendant without day is reviewable on writ of error under this Act. U. S. v. Oppenheimer, (1916) 242 U. S. 85, 37 S. Ct. 68, 61 U. S. (L. ed.) 161.

Vol. VI, p. 163, sec. 997.

VIII. PARTIES (p. 166)

Waiver of irregularity.—In *McCluskey v. Marysville, etc., R. Co.*, (1917) 243 U. S. 36, 37 S. Ct. 374, 61 U. S. (L. ed.) 578, affirming a judgment of the Circuit Court of Appeals which affirmed a judgment dismissing an action by the plaintiff Nordgard, the court said: "In view of the stipulation of the parties the court below, agreeing to the substitution as plaintiff in error of the administrator of Nordgard, who died while the cause was there pending, the motion to dismiss on the ground that the writ of error was wrongfully allowed, and that the administrator is not a proper party, is based upon a mere irregularity which was waived."

Vol. VI, p. 198, sec. 1007.

V. SECURITY REQUIRED (p. 200)

Liability on bond.—It has long been settled that a supersedeas bond in common form, conditioned that the appellant shall "prosecute its appeal to effect and answer all damages and costs, if it fails to make its plea good," binds the surety, upon affirmation of a judgment or decree for the mere payment of money, to pay the amount of the judgment or decree. *Pease v. Rathbun-Jones Engineering Co.*, (1917) 243 U. S. 273, 37 S. Ct. 283, 61 U. S. (L. ed.) 715, Ann. Cas. 1918C 1147, citing *Catlett v. Brodie*, 9 Wheat. 553, 6 U. S. (L. ed.) 158, and holding that the federal District Court had power to render summary judgment against the sureties on such a bond on affirmation of the decree.

Vol. VI, p. 238, sec. 5.

A defendant is not entitled to remove a cause from a state court to a federal court on the ground that it was incorporated under an Act of Congress. *Texas, etc., R. Co. v. Hanson*, (Tex. Civ. App. 1916) 189 S. W. 289.

LIMITATION OF VESSEL OWNER'S LIABILITY

Vol. IV, p. 336, sec. 4283.

VI. Measure of liability.

1. Value of vessel.

VII. Effect of proceedings in other actions.

X. Waiver of statutory limitation.

VI. MEASURE OF LIABILITY

1. Value of Vessel (p. 349)

Determination of value of vessel.—The provision for limiting the liability of the shipowner to the value of the vessel and the freight then earned was intended to encourage the investment of capital in such ventures. The American rule is that this value is to be determined at the end of the voyage on which the collision occurred and damage was done; that the methods pointed out in the statute and rules are not exclusive, but that, the libel having been filed, the admiralty court has jurisdiction to proceed to ascertain this value by procedure proper under the circumstances of the particular case, preferably, if possible, by appraisement or sale under order of the court. The principal object of the statute is to change the common-law liability, and restrict the liability of the shipowner to the value of the vessel at the termination of the voyage and the earned freight. *The Ethelstan*, (S. D. Fla. 1917) 246 Fed. 187.

Towage charges from the place where the voyage was terminated to another port where the vessel was sold may not be deducted from the gross amount of the sale of the vessel when it appears that the value of the vessel in the port of sale was no greater than her value in the port of termination. *The Ethelstan*, (S. D. Fla. 1917) 246 Fed. 187.

VII. EFFECT OF PROCEEDINGS IN OTHER ACTIONS (p. 350)

Suits on claims against owners stayed.—To the same effect as the original note see *Société Naphthés Transport v. Bieso Towboat Co.*, (C. C. A. 5th Cir. 1917) 241 Fed. 463, 154 C. C. A. 295.

X. WAIVER OF STATUTORY LIMITATION (p. 360)

Delay in asserting right.—The right secured to the shipowner by this section is not waived by a failure to assert it before a decree is entered against him. *The Ethelstan*, (S. D. Fla. 1917) 246 Fed. 187.

A release bond does not have the effect of waiving the statutory limitation. *Société Naphthés Transports v. Bieso Towboat Co.*, (C. C. A. 5th Cir. 1917) 241 Fed. 463, 154 C. C. A. 295; *The Ethelstan*, (S. D. Fla. 1917) 246 Fed. 187.

Vol. VI, p. 368, sec. 18. [*Act of June 26, 1884.*]

Direct personal contracts.—A part owner of a vessel who signs his firm's name to a charter party containing an express warranty of seaworthiness is personally bound thereby, and, when sued for the loss of the cargo, occasioned by the unseaworthiness of the vessel, cannot, however blameless he may have been, claim the benefit of this section. *Pendleton v. Benner*, (1918) 246 U. S. 353, 38 S. Ct. 330, 62 U. S. (L. ed.) 770, *affirming* (C. C. A. 2d Cir. 1914) 217 Fed. 497, 133 C. C. A. 349.

Vol. VI, p. 371, sec. 1. [*Act of Feb. 13, 1893.*]

Liability of vessel—Proper care of cargo.—It is not a sufficient compliance with the provisions of this section merely to give proper care, custody and caution to the loading and stowage of cargo before sailing, but that duty continues throughout the voyage. *The Skipton Castle*, (C. C. A. 9th Cir. 1917) 243 Fed. 523, 153 C. C. A. 221.

Vol. VI, p. 377, sec. 2.

Bill of lading as affecting statutory requirement.—The stipulation of a bill of lading will not be permitted to cut down the statutory requirements of this section. *The Noble*, (C. C. A. 8th Cir. 1917) 244 Fed. 95, 156 C. C. A. 523.

Vol. VI, p. 377, sec. 3. [*Act of Feb. 13, 1893.*]

IV. SEAWORTHY VESSEL

Affirmative evidence of seaworthiness.—The Harter Act has no application to a case showing damage to cargo by seawater where there is no affirmative evidence showing that the vessel was seaworthy at the beginning of the voyage, or even at a time approximately near its beginning. Such proof cannot be supplied by inference or presumption. *Herman v. Compagnie Generale Transatlantique*, (C. C. A. 2d Cir. 1917) 242 Fed. 859, 155 C. C. A. 447.

Bad stowage.—The Harter Act will not release a vessel for bad stowage. *Gulden v. Hiljos De Jose Toya S. en C.*, (E. D. N. Y. 1917) 243 Fed. 780.

VI. BURDEN OF PROOF (p. 391)

Seaworthy vessel.—The relief afforded by this section to shipowners is purely statutory, and in order for a shipowner to avail himself of the exemption from liability for errors in management, the burden is on him to prove affirmatively that the vessel was seaworthy at the beginning of the voyage, or that due diligence had been used to make her so. *The Governor Powers*, (D. C. Mass. 1917) 243 Fed. 961.

Damage by sea water.—To the same effect as the original note see *Jamison v. New York, etc., R. Co.*, (S. D. N. Y. 1917) 241 Fed. 389.

MILITIA

Vol. VI, p. 432, sec. 57.

The militia of the United States, as defined in the Act of June 3, 1916, is sufficiently inclusive to embrace most, if not all, of the individuals composing the militia, organized or unorganized, of the several states. But should they by conscription be drafted into an army destined for foreign parts they would necessarily lose the character of organized state militia, and the implied constitutional inhibition against calling out the organized state militia except to "execute the laws of the Union, suppress insurrections and repel invasions" would cease to apply. *U. S. v. Stephens*, (D. C. Del. 1917) 245 Fed. 956.

Vol. VI, p. 439, sec. 69.

Upon the expiration of his enlistment an enlisted man is not automatically furnished with [2d ed.]

loughed to the reserve. No act or acts done by a company captain, or no act or acts of the company captain and the enlisted man, without the approval of the War Department, can operate as a discharge of the enlisted man, or as a furlough to the reserve. *Ex p. Roach*, (N. D. Ala. 1917) 244 Fed. 625.

Vol. VI, p. 439, sec. 70.

Effect of failure to sign enlistment contract.—"It is quite true that section 70 declares, as to members of the National Guard of the several states, whose enlistment and oath do not contain the broader obligation, that they shall not be recognized as members of the National Guard until they have assumed the broader obligation by signing the enlistment contract and taking the oath prescribed; but we look upon this as merely declaratory of

the fact that they shall not be recognized and classed in the National Guard distinctively designated as such, and we do not view such declaration as at all inconsistent with the idea that they shall remain in the class of service into which they had in fact previously entered. In short, upon mobilization and under election, not being recognized as members of that body of men known as the National Guard, the militiamen, by operation of law, are relegated to that branch of the service to which they belong, and in

which they are bound to perform certain federal military duty." *Sweetser v. Emerson*, (C. C. A. 1st Cir. 1916) 236 Fed. 161, 149 C. C. A. 351, Ann. Cas. 1917B 244.

Vol. VI, p. 444, sec. 111.

In general.—Authority from Congress and a draft order from the President is all the formality required to make a member of the militia a soldier of the United States army. *Ex p. Postal*, (N. D. Ohio 1917) 243 Fed. 664.

MINERAL LANDS, MINES AND MINING

Vol. VI, p. 508, sec. 2318.

I. IN GENERAL (p. 513)

Coal lands.—"Land valuable for coal is mineral land within the meaning of the public land laws." *U. S. v. Sweet*, (1918) 245 U. S. 563, 38 S. Ct. 193, 62 U. S. (L. ed.) 473.

The end lines of a mining claim are required to be parallel. The side lines are not required so to be. The end lines of a mining location are required to be projected parallel with each other and crosswise of the general course of the veins within the surface limits of the location, and whenever the top or the apex of the vein is found within the surface lines extended vertically downwards the vein may be followed outside of the vertical side lines. The end lines are not necessarily those which are marked on the map or diagram of the location as such, but they may be projected at the extreme points where the apex leaves the location as marked on the surface. *Quilp Gold Min. Co. v. Republic Mines Corp.*, (1917) 96 Wash. 439, 165 Pac. 57.

IV. LEGAL LIMITS OF LODGE (p. 519)

Presumption as to direction of vein.—Where a vein is found to have a certain course, so far as it is disclosed, the inference may be drawn that it will continue in the same direction. Hence, if it crosses an end line and for some distance the strike is parallel to the side lines, it is not unreasonable to conclude that it continues in that direction. *Bourne v. Federal Min., etc., Co.*, (C. C. Idaho 1908) 243 Fed. 466.

Vol. VI, p. 512, sec. 2320.

The conveyance of a placer claim includes, as matter of law, all known veins and lodes of quartz. *Wilbur v. Everhardy*, (Cal. 1917) 167 Pac. 861.

Vol. VI, p. 523, sec. 2322.

II. POSSESSORY RIGHTS

Apex of vein.—A fissure vein with two dipping limbs whose course downward is substantial, regular, and practically free from undulations, cannot be said as a matter of law not to have a top or apex within a lode mining claim. *Jim Butler Tonopah Min. Co. v. West End Consol. Min. Co.*, 247 U. S. 450, 38 S. Ct. 574, 62 U. S. (L. ed.) 1207.

III. EXTRALATERAL RIGHTS (p. 527)

Extent of right.—The extralateral right, under this section, to follow all apexing veins on their downward dip between the end lines of a lode mining claim continued in their own direction and extended vertically downward, may be exercised, where the other elements of such right are present, beyond either or both side lines, depending upon the direction which the departing vein or veins take on their downward course. *Jim Butler Tonopah Min. Co. v. West End Consol. Min. Co.*, 247 U. S. 450, 38 S. Ct. 574, 62 U. S. (L. ed.) 1207.

End lines of a lode mining claim are none the less parallel and straight for the purpose of securing extralateral rights, although a portion of each of two diagonally opposite corners of the claim, which is otherwise a parallelogram in form, is cut off by diagonal lines. These diagonal lines must be considered as parts of the side lines, not of the end lines. *Jim Butler Tonopah Min. Co. v. West End Consol. Min. Co.*, 247 U. S. 450, 38 S. Ct. 574, 62 U. S. (L. ed.) 1207.

Vol. VI, p. 533, sec. 2324.

V. ANNUAL ASSESSMENT WORK

2. Work, Labor and Improvements (p. 544)

Claim held in common.—Where two or more contiguous claims are held by the

same person or persons, work done in good faith upon any one of them, or outside of the boundaries of either of them, which directly tends to the development or benefit of all the claims of mining purposes, should be held applicable to each and all of such claims. *Consolidated Mut. Oil Co. v. U. S.*, (C. C. A. 9th Cir. 1917) 245 Fed. 521, 157 C. C. A. 633.

Vol. VI, p. 555, sec. 2325.

Order of complying with statutory requirements.—It is the well established law that in the absence of any intervening bona fide rights, the order in which the statutory requirements concerning the marking of the locations are complied with is immaterial; the marking of the boundaries of a claim may precede the discovery, or the discovery may precede the marking, and, if both are complete before the rights of others intervene, the earlier act will inure to the benefit of the locator as of the date of the later, and a complete possessory title to the premises will vest in him as of the later date. *Consolidated Mut. Oil Co. v. U. S.*, (C. C. A. 9th Cir. 1917) 245 Fed. 521, 157 C. C. A. 633.

Vol. VI, p. 563, sec. 2326.

XI. JUDGMENT (p. 573)

Effect.—Even after judgment of the court in a proceeding by an adverse claimant to a mining claim, under this section, on the question of the right of possession, the Land Department may pass upon the sufficiency of the proofs to ascertain the character of the land and determine whether the conditions of the law have been complied with in good faith. *Land v. Cameron*, (1916) 45 App. Cas. (D. C.) 404.

Vol. VI, p. 577, sec. 2330.

Extent of claim.—Any device whereby one person is to acquire more than twenty, or an association more than one hundred and sixty acres in area, by one discovery, constitutes a fraud upon the government and is without legal support and void. *U. S. v. Brookshire Oil Co.*, (S. D. Cal. 1917) 242 Fed. 718.

Vol. VI, p. 581, sec. 2333.

Findings of Land Department.—A finding of the Land Department upon *ex parte* proofs presented in support of a placer mining claim that a tract of public land was valuable for placer mining was not in itself final or conclusive, but essentially interlocutory, being only a step in the proceedings looking to the ultimate disposal of the title, and, until the issue of a patent, was as much open to reconsideration and reversal as are the interlocutory orders or decrees of a court of equity until the entry of a final decree. *Kirk v. Olson*, (1917) 245 U. S. 225, 38 S. Ct. 114, 62 U. S. (L. ed.) 125.

Vol. VI, p. 593, sec. 2347.

Mandamus will not lie to compel the Secretary of the Interior to issue to the relators a patent for coal land which they entered when it was still unreserved, unsurveyed, and unclassified public land, although after its classification as coal land and appraisal they applied to purchase it and conformed to the requirements of sections 2347 and 2348, where the Secretary's refusal to issue a patent to the relators was based upon the ground that not having opened a mine on the land until after its classification and appraisal, they would have to pay the appraised price of the land, and not the price fixed by the statute. *Handel v. Lane*, (1916) 45 App. Cas. (D. C.) 389.

Vol. VI, p. 607. [Act of Feb. 12, 1903.]

In general.—This Act was the first legislative recognition ever made by Congress of any right on the part of an occupant or claimant of oil bearing lands prior to the discovery of oil thereon. By this Act, which was obviously a remedial statute, and therefore to be liberally construed to effect the object, Congress expressly gave to the good-faith occupant or claimant of either oil or gas bearing lands, who, at the date of the Act, was "in diligent persecution of work leading to discovery of oil or gas," a status. *Consolidated Mut. Oil Co. v. U. S.*, (C. C. A. 9th Cir. 1917) 245 Fed. 521, 157 C. C. A. 633.

NATIONAL BANKS

Vol. VI, p. 654, sec. 5136.

V. "INCIDENTAL POWERS AS SHALL BE NECESSARY," ETC.

5. "*Discounting and Negotiating Evidences of Debt.*"

a. In General (p. 668)

An authority to discount or make discounts, from the very force of the terms, necessarily includes an authority to take interest in advance. *Cooper v. National Bank*, (Ga. 1917) 94 S. E. 611.

VII. ULTRA VIRES TRANSACTIONS (p. 679)

Liability for benefits.—To the same effect as the original note see *U. S. Fidelity, etc., Co. v. Pittsboro First State Bank*, (1917) 116 Miss. 239, 76 So. 747.

Vol. VI, p. 722, sec. 23. [*Act of Dec. 23, 1913.*]

I. WHO ARE LIABLE AS STOCKHOLDERS

1. In General (p. 723)

Although a national bank is bankrupt, if a purchaser of stock in such bank has satisfied this section he has a right to a rescission of his purchase in case there was fraud by the seller out of which resulted the sale. *Salter v. Williams*, (C. C. A. 3d Cir. 1917) 244 Fed. 126, 156 C. C. A. 554, *reversing* (D. C. N. J. 1914) 219 Fed. 1017.

2. Married Women (p. 723)

A married woman whose husband transferred national bank stock to her without her knowledge is not, as long as she continues ignorant of that act, liable as a stockholder under this section. But she may of course ratify the act and thereby become liable. *Williams v. Vreeland*, (C. C. A. 3d Cir. 1917) 244 Fed. 346, 156 C. C. A. 554, holding however that ratification was not shown.

Vol. VI, p. 744, sec. 5197.

IV. INTEREST AT RATE ALLOWED BY STATE LAW (p. 745)

In general.—To the same effect as the original note see *Cooper v. National Bank*, (Ga. 1917) 94 S. E. 611.

Vol. VI, p. 747, sec. 5198,

V. RECOVERY BACK OF TWICE AMOUNT OF INTEREST PAID

2. *Necessity That Interest Be "Paid"* (p. 752)

To the same effect as the original note see *Cooper v. National Bank*, (Ga. 1917) 94 S. E. 611.

12. *Limitation of Time* (p. 757)

In computing the time within which an action for the recovery of usurious interest paid must be brought the first day of the period should be excluded and the last day included. *Haskell First Nat. Bank v. Drew*, (Okla. 1918) 169 Pac. 1092.

Vol. VI, p. 762, sec. 5201.

Purchase by bank to protect debt.—It is incompetent for a national bank to purchase its own stock, unless necessary to save a debt going to it. *Louisville First Nat. Bank v. Armstrong*, (Ky. 1917) 198 S. W. 226.

Vol. VI, p. 766, sec. 5204.

The withdrawal of assets by a bank while insolvent is prohibited by this section. *Louisville First Nat. Bank v. Armstrong*, (Ky. 1917) 198 S. W. 226.

Vol. VI, p. 770, sec. 5209.

II. EMBEZZLEMENT

3. *Who Liable* (p. 774)

The receiver of a national bank is not an "agent" within the meaning of this section. *U. S. v. Weitzel*, (1918) 246 U. S. 533, 38 S. Ct. 381, 62 U. S. (L. ed.) 872.

VII. FALSE ENTRIES

2. *Who Liable* (p. 782)

The receiver of a national bank is not an "agent" within the meaning of this section. *U. S. v. Weitzel*, (1918) 246 U. S. 533, 38 S. Ct. 381, 62 U. S. (L. ed.) 872.

Vol. VI, p. 796, sec. 5219.

II. PROPERTY TAXABLE

1. *Stock and Real Property* (p. 797)

Shares of stock in a Federal Reserve Bank owned by a national bank are taxable under this section. *Cincinnati First Nat. Bank v. Durr*, (S. D. Ohio 1917) 246 Fed. 163.

Vol. VI, p. 828, sec. 11.

Paragraph (k) is constitutional. *Bay City First Nat. Bank v. Union Trust Co.*, (1917) 244 U. S. 417, 37 S. Ct. 734, 61 U. S. (L. ed.) 1233, *reversing* (1916) 192 Mich. 640, 159 N. W. 335.

Vol. VI, p. 850, sec. 5234.

V. ENFORCEMENT OF INDIVIDUAL LIABILITY OF STOCKHOLDERS

1. Determination and Assessment by Comptroller (p. 859)

Withdrawal of assessment.—An assessment made by the Comptroller of the Currency upon the shareholders in an insolvent national bank may be withdrawn by him before it is paid, or when it is partly paid if he shall conclude that further payment is not necessary, and there is no prescribed form in which such action shall be taken. *Korbly v. Springfield Inst. for Savings*, (1917) 245 U. S. 330, 38 S. Ct. 62 U. S. (L. ed.) 326.

Vol. VI, p. 873, sec. 5239.

II. COMMON LAW LIABILITY OF DIRECTOR AND ENFORCEMENT THEREOF

In *Chesbrough v. Woodworth*, (1917) 244 U. S. 72, 37 S. Ct. 579, 61 U. S. (L. ed.) 1000, the court said: "This section was considered in *Yates v. Jones Nat. Bank*, 206 U. S. 158, 179, 51 L. ed. 1002, 1014, 27 S. Ct. 638, and it was held that the rule expressed by it is exclusive and precludes a common-law liability for fraud and deceit. To the same effect are *Thomas v. Taylor*, 224 U. S. 73, 56 L. ed. 673, 32 S. Ct. 403, and *Jones Nat. Bank v. Yates*, 240 U. S. 541, 60 L. ed. 788, 36 S. Ct. 429."

III. STATUTORY LIABILITY OF DIRECTORS AND ENFORCEMENT THEREOF

8. False Reports to Comptroller of Currency (p. 881)

Directors in a national bank, who, with knowledge of their falsity, attested reports of the bank's financial condition, made to the Comptroller of the Currency, and as called for by him, are made personally liable to one who has sustained a loss by reason of his purchase of stock in the

bank in reliance on such false reports. The damages recoverable from the directors by one who has sustained a loss by reason of their having knowingly participated in, or assented to, a violation of the National Bank Act, are personal to the plaintiff. He sues in his own right, not for the bank. A direct showing of negligence is not involved; the sole primary issue is whether defendants caused or permitted to be made a statement of the bank's condition, upon which statement plaintiff relied, to his injury, and which statement defendants knew was materially false. The detailed history of the entire transactions surrounding certain "bad" loans made by the national bank is admissible in evidence. One director may be made the sole defendant, or others may be joined with him. *Chesbrough v. Woodworth*, (1917) 244 U. S. 72, 37 S. Ct. 579, 61 U. S. (L. ed.) 1000 *affirming* (C. C. A. 6th Cir. 1912) 195 Fed. 875, 116 C. C. A. 465, (C. C. A. 6th Cir. 1915) 221 Fed. 912, 137 C. C. A. 482.

Vol. VI, p. 903, sec. 5242.

II. ATTACHMENT, INJUNCTION OR EXECUTION

4. Injunction or Execution

c. State Courts (p. 913)

To the same effect as the original note see *Hartman v. Keys*, (Tex. Civ. App. 1917) 198 S. W. 1002.

Vol. VI, p. 928, sec. 4. [Act of July 12, 1882.]

Jurisdiction and venue.—A federal question is involved, giving a federal District Court jurisdiction, without regard to citizenship, in an action to enforce the personal liability of directors in a national bank, under R. S. sec. 5239, for the damages suffered by one who has purchased capital stock in such bank in reliance upon false reports of the bank's financial condition to the Comptroller of the Currency, attested by them, and upon the declaration of dividends out of capital instead of out of net profits, assented to by them. *Chesbrough v. Woodworth*, (1917) 244 U. S. 72, 79, 37 S. Ct. 579, 61 U. S. (L. ed.) 1000, *affirming* (C. C. A. 6th Cir. 1912) 195 Fed. 875, 116 C. C. A. 465, (C. C. A. 6th Cir. 1915) 221 Fed. 912, 137 C. C. A. 482.

NATURALIZATION

Vol. VI, p. 944, sec. 2169.

"Free white persons"—*Half-breeds*.—One whose father was a Spaniard and his mother a Filipino is not a "white" person as the term is used in this section. *In re Rallos*, (E. D. N. Y. 1917) 241 Fed. 686.

Hindus cannot be naturalized. *In re Sadar Bhagwab Singh*, (E. D. Pa. 1917) 246 Fed. 496.

This section modified (by construction) so as to admit Filipinos to citizenship, see notes to vol. VI, p. 1001, § 30, *infra*, p. 1160.

Vol. VI, p. 947, sec. 2171.

Petition by alien enemy—"At the time of his application."—Where a subject of the Emperor of Germany filed his petition for naturalization Jan. 11, 1917, and the application came up for hearing on April 14, 1917, the congressional resolution declaring a condition of war with Germany having been passed April 6, 1917, the "hearing on the application" was "deferred until the termination of war, or until further order of the court." *In re Duns*, (W. D. Wash. 1917) 245 Fed. 813. Similarly in *In re Hass*, (N. D. Tex. 1917) 242 Fed. 739; *In re Jonasson*, (D. C. Md. 1917) 241 Fed. 723; and in *Ex p. Borchardt*, (E. D. S. C. 1917) 242 Fed. 1006, the petition of the applicant was "refused, but without prejudice to him to renew his application after the conclusion of peace between the United States and Germany." And petitions were also denied in *In re Naturalization of Subjects of Germany*, (E. D. Wis. 1917) 242 Fed. 971. *Contra*, *In re Nannanga*, (S. D. Ga. 1917) 242 Fed. 737, and *In re Kreuter*, (S. D. Cal. 1917) 241 Fed. 985, where the applicant German's petition was granted; *U. S. v. Meyer*, (C. C. A. 2d Cir. 1917) 241 Fed. 305, 154 C. C. A. 185, Ann. Cas. 1918C 704, *affirming*, by a divided court, an order granting a German's petition.

A man born in 1882 in Schleswig was, after April 6, 1917, an alien enemy. *In re Jonasson*, (D. C. Md. 1917) 241 Fed. 723.

Vol. VI, p. 958, sec. 4, par. first.

"A petition for naturalization, filed by a person under age of 21 years, is void." *In re Cordaro*, (N. D. Ia. 1917) 246 Fed. 735, dismissing the petition.

An alien soldier in the service of the army who upon his examination states that it is not his intention to reside permanently in the United States, but that it is his intention, upon his discharge from the service, to return to his native country, to remain there permanently, is not entitled to naturalization, either under the

general naturalization status or the Act of May 9, 1918, ch. —, § 1, *ante*, this volume, title NATURALIZATION, p. 488. *In re Naturalization of Aliens, etc.*, (E. D. Mo. 1918) 250 Fed. 316.

Vol. VI, p. 959, sec. 4, par. second.

III. FILING PETITION

1. Time for Filing (p. 962)

"Not more than seven years."—A declaration of intention made before the passage of this Act is not saved by the proviso of paragraph first of this section from the seven-year limitation in this section after the date of such declaration of intention. And an alien who has made a declaration of intention before the passage of this Act is required to file his petition for citizenship at a time not more than seven years after the date of such declaration of intention. *U. S. v. Morena*, (1917) 245 U. S. 392, 38 S. Ct. 151, 62 U. S. (L. ed.) 359.

An alien's petition filed in a federal court after the expiration of the seven years is too late, notwithstanding his having, within the seven years, twice filed a petition in the state, which were there properly dismissed as the petitioner was not a resident within the territorial jurisdiction of the court. *U. S. v. Mueller*, (C. C. A. 8th Cir. 1917) 246 Fed. 679, 158 C. C. A. 635.

One who filed his declaration of intention July 19, 1904, and his application for naturalization Dec. 14, 1916, more than seven years after this Act took effect, was cut off and barred by this Act. *In re Bourke*, (D. C. Kan. 1917) 243 Fed. 794.

VI. SECOND PROVISIO CONSTRUED (p. 961)

Misinformation in *U. S. v. Meyer*, (C. C. A. 2d Cir. 1917) 241 Fed. 305, 154 C. C. A. 185, Ann. Cas. 1918C 704, was held to be such as to bring the applicant within the benefit of the second proviso in this paragraph.

V. CERTIFICATE (p. 964)

In general.—Filing the certificate of arrival as provided in this subsection is an essential prerequisite to a valid order of naturalization; and "filing the certificate of arrival being a matter of substance, it is clear that no power is vested in the naturalization court to dispense with it." *U. S. v. Ness*, (1917) 245 U. S. 319, 38 S. Ct. 118, 62 U. S. (L. ed.) 321, *reversing* (C. C. A. 8th Cir. 1916) 230 Fed. 950, 145 C. C. A. 144, Ann. Cas. 1917C 41, which affirmed (N. D. Ia. 1917) 217 Fed. 169.

Vol. VI, p. 967, sec. 4, par. fourth.**II. CONTINUOUSLY RESIDED (p. 968)**

In general.—A certificate of citizenship cannot legally be granted if the petitioner has not continuously resided in the United States for a period of five years. *In re Giovine*, (W. D. N. Y. 1917) 242 Fed. 741.

Rules for applying this provision.—“The courts are agreed that, in applying the provision of the naturalization statute which requires continuous residence within the United States for a period of five years next preceding the filing of the petition for citizenship, two rules should be followed and observed: (1) When actual residence within the United States is once established, the continuity of such residence will not be interrupted by temporary absences from the United States for the purpose of either business or pleasure, provided there is no intention to change or abandon the domicile. And (2) the question whether an alien has resided continuously in the United States for the required five years is one of fact to be determined from all the facts and circumstances in each particular case.” *U. S. v. Jorgenson*, (W. D. Mich. 1916) 241 Fed. 412.

Actual and substantial residence within the United States is required. *U. S. v. Ginsberg*, (W. D. Mo. 1914) 244 Fed. 209, holding that, on the evidence, the petitioner was and has been, throughout the required period, a resident of Brazil, the court saying: “While intention is one of the determining elements of residence, nevertheless intention alone is not sufficient, but must be coincident with the physical act.”

Continuous residence as question of fact.—“*The intention of an alien as to his residence or domicile once established is a most important, and usually a controlling factor in determining his right to citizenship. . . . The question of intention is always one of fact to be determined from both actions and declarations, and oftentimes conduct is more persuasive than words.*” *U. S. v. Jorgenson*, (W. D. Mich. 1916) 241 Fed. 412, holding that an applicant's petition was properly granted, though he had been absent in the Panama Canal Zone during part of the five-year period.

“Seven new subdivisions” were added to this section 4 by the Act of May 9, 1918, ch. —, § 1, *ante*, this volume, title NATURALIZATION, p. 488. *In re Naturalization of Aliens, etc.*, (E. D. Mo. 1918) 250 Fed. 316.

Vol. VI, p. 977, sec. 9.**I. HEARING “IN OPEN COURT” (p. 977)**

Hearing at chambers.—A final hearing is not had in open court, if, after the peti-

tion is first presented in open court, the hearing thereof is passed to and finally held in the chambers of the judge adjoining the court room, on a subsequent day and at an hour earlier than that to which the court has been regularly adjourned. *U. S. v. Ginsberg*, (1917) 243 U. S. 472, 37 S. Ct. 422, 61 U. S. (L. ed.) 853, *reversing*, in effect (W. D. Mo. 1914) 244 Fed. 209.

Vol. VI, p. 984, sec. 13.

Construed with R. S. sec. 2687.—This section is in *pari materia* with R. S. sec. 2187 in CUSTOMS DUTIES, vol. II, p. 968, and construing the two sections together, a clerk of a court is not entitled to the full maximum sum allowed for fees collected in the naturalization proceedings in any one fiscal year received during six months of such year, but is only entitled to retain his pro rata of said maximum sum for the period during which said fees were collected. *Darling v. U. S.*, (1916) 16 Ct. Cl. 100.

Effect of state statutes regulating fees of state officers.—This section “was not intended to and did not control the ownership of the fees retainable by virtue of it by the clerks of the courts of record of this state. It leaves those fees to whatever disposition may be provided by the state law, even if it be true that under the Act the clerks are agents of the national government. *Mulcrevy v. San Francisco*, (231 U. S. 669, 34 S. Ct. 260, 58 U. S. (L. ed.) 425. We must, therefore, heed the relevant laws of the state.” *Price v. Erie County*, (1917) 221 N. Y. 260, 116 N. E. 988.

Controlled by the decision in *Mulcrevy v. San Francisco*, (1914) 231 U. S. 669, 34 S. Ct. 260, 58 U. S. (L. ed.) 425 (*affirming* (1910) 15 Cal. App. 11, 113 Pac. 339, it was held in *Alameda County v. Cook*, (1917) 32 Cal. App. 165, 162 Pac. 405, that the county clerk of Alameda county, *ex officio* clerk of the Superior Court, was not entitled to retain for his own use and benefit one-half of the fees collected by him in naturalization cases, but must pay the same into the treasury of Alameda county.

As stated in *State v. Smith*, (1917) 165 N. W. 896, “the Nebraska statute in force when the naturalization fees in controversy were collected did not require the clerk of the District Court to account to the county for any part of them.”

In New York the clerk of Erie county and of the courts of record therein was not entitled to retain, for his own use one-half the fees collected by him in naturalization proceedings, but must pay them to the county treasurer. *Price v. Erie County*, (1917) 221 N. Y. 260, 116 N. E. 988.

Vol. VI, p. 987, sec. 15.

III. GROUNDS FOR CANCELLATION

3. *Illegal Procurement* (p. 992)

In general.—Appearance of the United States, under section 11 of this Act, in opposition to the granting of a petition for naturalization, does not make the order *res judicata* so as to preclude a suit to cancel the order as having been “illegally procured”; because, for instance the petitioner failed to file with the clerk the certificate from the Department of Commerce and Labor as required in section 4, subdivision 2 of this Act. *U. S. v. Ness*, (1917) 245 U. S. 319, 38 S. Ct. 118, 62 U. S. (L. ed.) 321, *reversing* (C. C. A. 8th Cir. 1916) 230 Fed. 950, 145 C. C. A. 144, Ann. Cas. 1917C 41, which *affirmed* (1914) 217 Fed. 169), holding that “§ 11 and § 15 were designed to afford cumulative protection against fraudulent or illegal naturalization.”

Petitioner not qualified by residence.—A certificate of citizenship may be set aside and canceled where the uncontradicted evidence at the hearing of the petition showed indisputably that the petitioner was not qualified by residence and citizenship, and that the court or judge who heard the petition and ordered the certificate misapplied the law and the facts. *U. S. v. Ginsburg*, (1917) 243 U. S. 472, 37 S. Ct. 422, 61 U. S. (L. ed.) 853, *reversing* in effect, (W. D. Mo. 1914) 244 Fed. 209.

Evidence disproving residence continuously for five years in the United States was the ground upon which a certificate of citizenship was canceled in *In re Giovine*, (W. D. N. Y. 1917) 242 Fed. 741.

Witness verifying petition found not credible.—In view of the requirements in paragraph 3 of subdivision 2 of section 4 (“The petition shall also be verified” etc.) and in section 5 of this Act, it was ground for cancellation of a certificate of naturalization that the court after the witness whose affidavit with that of one other was attached to and filed with the petition testified on the final hearing that he had not known the petitioner for five years, permitted the substitution of another witness who had made no affidavit to give the requisite testimony, and thereon granted the petition. *U. S. v. Gulliksen*, (C. C. A. 8th Cir. 1917) 244 Fed. 727, 157 C. C. A. 175.

VIII. PLEADINGS AND PROCEDURE

1. *In General* (p. 995)

“This is an equitable proceeding (*United States v. Ness*, 230 Fed. 950, 145 C. C. A. 144; *Luria v. United States*, 231 U. S. 9, 27, 28, 34 Sup. Ct. 10, 58 L. Ed. 101; *United States v. Salomon* [D. C.] 231 Fed. 461; and *Id.*, 231 Fed. 928, 146 C. C. A. 124), and hence mere form, unless jurisdictional, must yield to substance. Citizenship granted by a court of competent jurisdiction after full hearing should not be taken away unless, from the facts presented, it clearly appears that such citizenship was illegally procured and that the applicant therefor was not entitled thereto at the time his petition was filed. A court decree which accords with truth and justice ought not to be annulled, either because of formal irregularities in the proceedings leading up to its rendition, or because it was based upon an incorrect theory of law, or erroneous reasoning as to facts.” *U. S. v. Jorgenson*, (W. D. Mich. 1916) 241 Fed. 412.

Vol. VI, p. 1001, sec. 30.

Racial restrictions of section 2169.—In view of the debates in Congress and the legislative history of this section 30, R. S. sec. 2169, vol. VI, p. 944, is to be regarded as so modified as to admit to citizenship a Filipino otherwise qualified for citizenship. *In re Bautista*, (N. D. Cal. 1917) 245 Fed. 765, holding, however, that only natural-born Filipinos are thus eligible, and that an alien not born in the Philippine Islands is not eligible unless under R. S. sec. 2169.

Vol. VI, p. 1004, sec. 1.

Filipinos born in the Philippine Islands and whose permanent allegiance was transferred to the United States by force of the treaty are aliens as that term is used in this Act and entitled to its benefit. *In re Bautista*, (N. D. Cal. 1917) 245 Fed. 765.

Half-breed Filipino.—One whose father was a Spaniard and his mother a Filipino is not entitled to the benefit of this provision. *In re Rallos* (E. D. N. Y. 1917) 241 Fed. 686, disagreeing with a distinction made in *In re Mallari*, (Mass. 1906) 239 Fed. 416.

NAVY

Vol. VI, p. 1074, sec. 1386.

Appointment.—The appointing power cannot attach conditions which have the effect of depriving an appointee as paymaster's clerk of what the law allows him to receive. *Katzer v. U. S.*, (1917) 52 Ct. Cl. 32.

Vol. VI, p. 1107. [*Paymaster's clerk.*]

This provision "radically changed the method theretofore existing for the selection of paymasters' clerks and inaugurated a system designed to be complete in itself for the creation and selection of acting pay clerks, and chief pay clerks." *Seifert v. U. S.*, (1917) 52 Ct. Cl. 40.

Vol. VI, p. 1108. [*Chief pay clerks.*]

A paymaster's clerk commissioned a chief pay clerk under this Act was not "advanced in grade or rank pursuant to law" within the meaning of the Act of March 4, 1913, vol. VI, p. 1212. *Seifert v. U. S.*, (1917) 52 Ct. Cl. 40.

Vol. VI, p. 1165. [*Act March 2, 1895.*]

Jurisdiction on the Court of Claims is not conferred by this Act, nor has that court jurisdiction under the general grant of jurisdiction of claims "founded upon any laws of congress." *Harlee v. U. S.*, (1916) 51 Ct. Cl. 342.

Vol. VI, p. 1195, sec. 13.

Appointment from civil life in second "provided further."—An enlisted man who, having obtained his discharge, with the expectation and practical assurance of being appointed assistant paymaster as a promotion, for which he had taken an examination, was appointed assistant paymaster two days after his resignation, and was thus appointed from civil life, according to the letter of the law. But according to the doctrine of *U. S. v. Alger*, (1894) 151 U. S. 362, 14 S. Ct. 346, 38 U. S. (L. ed.) 192, he was not entitled to be so regarded, and the Comptroller of the Treasury eventually so ruled. Meanwhile he had received the increased pay given by the terms of the statute to appointees

from civil life, and his vouchers therefor were duly approved. It was held that the government was not entitled to be repaid the sum paid him in excess of that to which the Comptroller finally determined was his due. *U. S. v. United States Fidelity, etc., Co.*, (E. D. N. Y. 1917) 244 Fed. 316.

Vol. VI, p. 1197. [*Mileage or actual expenses, when allowed.*]

This provision did not operate to repeal R. S. sec. 1566 in NAVY, vol. VI, p. 1179, as to the provision that no officer shall be paid mileage except for travel actually performed, at his own expense and under orders. *Katzer v. U. S.*, (1917) 52 Ct. Cl. 32.

Officer within statute.—A paymaster clerk is not an "officer of the navy" within the meaning of this provision. *Ashton v. U. S.*, (1916) 51 Ct. Cl. 65.

Vol. VI, p. 1209. [*Aid to rear admirals.*]

A lieutenant commander is not entitled to additional pay on account of services as aid to a rear admiral. *Knox v. U. S.*, (1917) 52 Ct. Cl. 22.

Vol. VI, p. 1212. [*Officers to receive pay from date of commission.*]

A paymaster's clerk commissioned a chief pay clerk under the Act of March 3, 1915, vol. VI., pp. 1107, 1108, was not "advanced in grade or rank pursuant to law" with the meaning of this Act of March 4, 1913. *Seifert v. U. S.*, (1917) 52 Ct. Cl. 40.

Commission; departmental practice.—Where by the deliberate action of the administrative department a new commission is issued to correct a prior commission under the ruling of the court in *Toulou v. U. S.*, (1916) 51 Ct. Cl. 87, recognition will be given to the practice of the department in reckoning the date from that of appointment rather than from the time of actual service where there is no statute which prohibits said practice. *Toulou v. U. S.*, (1917) 52 Ct. Cl. 333.

PATENTS

Vol. VII, p. 11, sec. 4883.

- I. Nature of patent.
- II. Validity of patent.

I. NATURE OF PATENT (p. 11)

Nature of right — Eminent domain.—Rights secured under the grant of letters patent by the United States are properly protected by the constitutional guaranties and therefore not subject to be appropriated, even for public use, without adequate compensation. *William Cramp, etc., Ship, etc., Bldg., Co. v. International Curtis Marine Turbine Co.*, (1918) 246 U. S. 28, 38 S. Ct. 271, 62 U. S., (L. ed.) 560, *affirmed* (C. C. A. 3d Cir. 1917) 238 Fed. 564, 151 C. C. A. 500.

Right to vend — Price restrictions — See under this title vol. VII, p. 14, R. S. sec. 4884.

II. VALIDITY OF PATENT (p. 12)

Presumption.—The usual presumption that a patent is *prima facie* valid and that the burden is on defendant to establish its validity is inapplicable in a case where the Patent Office admits that the patent was granted inadvertently to the unsuccessful party to an interference suit. *Safe-Cabinet Co. v. Globe-Wernicke Co.*, (C. C. A. 2d Cir. 1917) 242 Fed. 497, 155 C. C. A. 273.

Vol. VII, p. 14, sec. 4884.

Price restrictions.—The monopoly conferred by the patent law does not give the manufacturers of a patented article the right, in derogation of the general law, to fix by contract between its general sales agent and purchasing dealers the price at which such article shall be resold, and an attempt to enforce the apparent obligations of such contract under the guise of a patent infringement is not embraced within the remedies given for the protection of the rights which the patent law confers. *Boston Store v. American Graphophone Co.*, (1918) 246 U. S. 8, 38 S. Ct. 257, 62 U. S. (L. ed.) 551.

Patent rights do not confer upon the patentee the right to fix the resale prices of a patented article sold by him. *Ford Motor Co. v. Union Motor Sales Co.*, (C. C. A. 6th Cir. 1917) 244 Fed. 156, 156 C. C. A. 584.

Vol. VII, p. 23, sec. 4886.

- III. What may be patented.
- IV. Invention.
- VII. Prior use or sale.
- VIII. Abandonment.

III. WHAT MAY BE PATENTED (p. 35)

Patent for method.—A patent for method cannot be sustained when it appears that the result achieved is due to the operation of a machine, but when the new result comes from certain acts or a series of steps, irrespective of mechanism, or the mechanical assemblage of parts, then the steps taken, or the acts performed, or the mode of treatment, involve patentable invention. *Buffalo Forge Co. v. Buffalo*, (W. D. N. Y. 1917) 246 Fed. 135.

Process — Rule of equivalency.—The same rule of equivalency applies to a process patent as to a mechanical patent. If the defendant omits one step, but uses an equivalent therefor, he does not escape infringement. *Philadelphia Rubber Works Co. v. Portage Rubber Co.*, (C. C. A. 6th Cir. 1917) 241 Fed. 108, 154 C. C. A. 108, *modifying and affirming* (N. D. Ohio 1915) 227 Fed. 623.

Combinations.—The same principle is applied to a process as to a mechanical patent, that is to say, each step in the process corresponds to each element in the mechanisms, and, unless the defendant uses all the steps of all the elements, he does not infringe. *Philadelphia Rubber Works, Co. v. Portage Rubber Co.*, (C. C. A. 6th Cir. 1917) 241 Fed. 108, 154 C. C. A. 108, *modifying and affirming* (N. D. Ohio 1915) 227 Fed. 623.

IV. INVENTION (p. 44)

What constitutes invention.—Slight variations claimed for a patent for improvements in railroad tie plates, from prior forms of such plates, do not constitute patentable invention. *Railroad Supply Co. v. Elyria Iron, etc., Co.*, (1917) 244 U. S. 285, 37 S. Ct. 502, 61 U. S. (L. ed.) 1136, *affirming* (C. C. A. 6th Cir. 1914) 213 Fed. 789, 130 C. C. A. 447.

Combination.—A new combination of old things may be patentable, where the combination is new and the result of the combination of the old elements is also new. *National Mach. Corp. v. Benthall Mach. Co.*, (C. C. A. 4th Cir. 1916) 241 Fed. 72, 154 C. C. A. 72, *affirming* (E. D. Va. 1915) 222 Fed. 918.

For a case in which the bringing together of elements confessedly old, for a gearing device for use in operating power washing machines and wringers, was held not to amount to a patentable combination, see *Grinnell Washing Machine Co. v. E. E. Johnson Co.*, (1918) 247 U. S. 426, 38 S. Ct. 547, 62 U. S. (L. ed.) 1196.

Different function in nonanalogous art.—An old and patented idea may involve invention, where it is applied to perform a different function in a different art. *Beckwith Box Toe Co. v. Gowdy*, (D. C. Mass. 1916) 244 Fed. 805.

Omission of parts.—Invention may be found in a new combination where one essential element of the old combination is omitted and there is no substitution of a mechanical equivalent. *Debnam v. Benthall Co.*, (C. C. A. 4th Cir. 1916) 241 Fed. 103, 154 C. C. A. 103.

Equivalents.—For a patent (acetylene lamp) held to exhibit meritorious invention and entitled to invoke the doctrine of equivalents, see *Abercrombie, etc., Co. v. Baldwin*, (1917) 245 U. S. 198, 38 S. Ct. 104, 62 U. S. (L. ed.) 240.

The term mechanical equivalent when applied to a slight improvement in the progress of an art, has a very narrow and limited meaning. The inventor is ordinarily confined to his specific device and receives little aid from the doctrine of equivalents. *Broadway Towel Supply Co. v. Brown-Meyer Co.*, (C. C. A. 9th Cir. 1917) 245 Fed. 659, 158 C. C. A. 87.

Mere improvement is not invention. *Wagner v. Meccano*, (C. C. A. 6th Cir. 1918) 246 Fed. 603, 158 C. C. A. 573.

Public demand for a product, as the result of advertising, is not an evidence of utility or invention. *Cohn v. Hickey-Freeman Co.*, (W. D. N. Y. 1917) 246 Fed. 256.

Commercial success alone is not sufficient where it is sought to prove an invention. *National Mach. Corp. v. Benthall Mach. Co.*, (C. C. A. 4th Cir. 1916) 241 Fed. 72, 154 C. C. A. 72, *affirming* (E. D. Va. 1915) 222 Fed. 918.

Successful public appreciation of a device is without importance, where there is a total lack of invention. *Package Machinery Co. v. Johnson Automatic Sealer Co.*, (C. C. A. 6th Cir. 1917) 246 Fed. 598, 158 C. C. A. 568.

The success of a device, in doubtful cases, may turn the scale in favor of patentability or novelty. *Alvey-Ferguson Co. v. Peter Schoenhofen Brewing Co.*, (N. D. Ill. 1917) 245 Fed. 762.

VII. PRIOR USE OR SALE (p. 117)

In general.—It is well settled that the prior use of an invention for two years invalidates a later patent, even if the patentee has no knowledge of the same. *Virginia-Carolina Peanut Picker Co. v. Benthall Mach. Co.*, (C. C. A. 4th Cir. 1916) 241 Fed. 89, 154 C. C. A. 89, *reversing* (E. D. Va. 1915) 222 Fed. 918.

Prior public use.—See *Le Roy v. Nicholas Power Co.*, (S. D. N. Y. 1917) 244 Fed. 955 (public use of a device on a machine).

VIII. ABANDONMENT (p. 127)

Presumption.—Abandonment is never presumed. The presumption is against abandonment and clear evidence of an intention to dedicate an improvement to the public is indispensable to establish an abandonment. *Virginia Carolina Peanut Picker Co. v. Benthall Mach. Co.*, (C. C. A. 4th Cir. 1916) 241 Fed. 89, 154 C. C. A. 89.

Abandonment results from the withholding from the public of an invention for personal profit and for an indefinite time. *Macbeth-Evans Glass Co. v. General Electric Co.*, (C. C. A. 6th Cir. 1917) 246 Fed. 695, 158 C. C. A. 651.

Vol. VII, p. 145, sec. 4888.

III. Claims.

2. Construction.
3. Essentials and scope.
5. Effect of claim.

III. CLAIMS

2. Construction (p. 158)

In general.—A claim cannot be so construed as to cover what was rejected by the patent office in the application for the patent. *Broadway Towel Supply Co. v. Brown-Meyer Co.*, (C. C. A. 9th Cir. 1917) 245 Fed. 659, 158 C. C. A. 87.

Some of the principles which should govern the construction of claims are stated in *Outlook Envelope Co. v. General Paper Goods Mfg. Co.*, (C. C. A. 2d Cir. 1917) 239 Fed. 877, 153 C. C. A. 5.

Claims for improvements.—In *Railroad Supply Co. v. Elyria Iron, etc., Co.*, (1917) 244 U. S. 285, 37 S. Ct. 502, 61 U. S. (L. ed.) 1136, *affirming* (C. C. A. 6th Cir. 1914) 213 Fed. 789, 130 C. C. A. 447, it was held that the state of the prior art required that designated patents for improvements in railroad tie plates, be limited strictly to the forms described in the claims.

Construed with specifications.—The claims fix the extent of the protection furnished by a patent. The claim is the measure of the invention. The specification, however, may be referred to in construing the patent and it is well understood that the claims are to be construed in the light of the specification. While the specification is never available for the purpose of expanding a claim, it may be referred to for the purpose of limiting it. *Miller Rubber Co. v. Behrend*, (C. C. A. 2d Cir. 1917) 242 Fed. 515, 155 C. C. A. 291, *following* *Fowler, etc., Mfg. Co. v. McCrum-Howell Co.*, (C. C. A. 2d Cir. 1914) 215 Fed. 905, 132 C. C. A. 143.

3. Essentials and Scope (p. 161)

Multiplication of claims as validating patent. See *A. B. Dick Co. v. Under-*

wood Typewriter Co., (S. D. N. Y. 1917) 246 Fed. 309.

5. *Effect of Claim* (p. 170)

Limitations in claims.—Limitations in claims cannot be disregarded if they have been inserted to meet the demands of the Patent Office, or if they have been deliberately and with industry adopted, even though voluntarily. The reason is that the patent is the measure of monopoly. The public has a right to act in reliance of any clear and expressed limitations contained in the grant. *Philadelphia Rubber Works Co. v. Portage Rubber Co.*, (C. C. A. 6th Cir. 1917) 241 Fed. 108, 154 C. C. A. 108.

If the inventor has intentionally limited a claim, he is bound by that limitation, notwithstanding it was voluntarily made. *Arnold-Creager Co. v. Barkwill Brick Co.*, (C. C. A. 6th Cir. 1917) 246 Fed. 441, 158 C. C. A. 505.

Vol. VII, p. 179, sec. 4893.

The decision of the Commissioner of Patents in the allowance and issue of a patent creates a *prima facie* right only. That the officials of the Patent Office are theoretical experts is undoubtedly true but it should be borne in mind that from the very nature of things they must accept the statement contained in the application as being true except in a case where such statement is contradicted. The court is not bound by the findings of the officials of the Patent Office based upon *ex parte* testimony. *National Mach Corp. v. Ben-thall Mach. Co.*, (C. C. A. 4th Cir. 1916) 241 Fed. 72, 154 C. C. A. 72.

Vol. VII, p. 193, sec. 4904.

Duty to declare interference.—The refusal of the Commissioner of Patents to declare an interference, where the Patent Office is informed, through the admission of an applicant, that the invention shown in his application was conceived on a date subsequent to the filing date upon an application of another person for the same invention is justified by the provisions of this section, since the duty to declare an interference imposed by this statute and by the rules of the Patent Office, cannot be deemed imperatively to arise merely because of an asserted antagonism between the applications, but there must be precedent and supervising judgment of the commissioner. *Ewing v. U. S.*, (1917) 244 U. S. 1, 37 S. Ct. 494, 61 U. S. (L. ed.) 955, *reversing* (1916) 45 App. Cas. (D. C.) 185.

Vol. VII, p. 231, sec. 4917.

Time of filing.—A disclaimer, filed to conform to the Supreme Court's decision, filed 107 days after said decision and

after mandate, but before expiration of the time for rehearing, was timely filed. *Minerals Separation v. Butte, etc., Min. Co.*, (D. C. Mont. 1917) 245 Fed. 577.

Effect of disclaimer on costs.—See *Stetson Hospital v. Snook-Roentgen Mfg. Co.*, (C. C. A. 3d Cir. 1917) 245 Fed. 654, 158 C. C. A. 82.

Vol. VII, p. 283, sec. 4900.

Effect of marking.—When articles are marked in compliance with this section, no other notice to an infringer is necessary to sustain suit. *Munger v. Perlman Rim Corp.*, (S. D. N. Y. 1917) 244 Fed. 799.

Vol. VII, p. 288, sec. 4919.

II. WHO LIABLE FOR INFRINGEMENT (p. 296)

United States—Infringement by officer.

—Where an officer of the United States in dealing with a subject within the scope of his authority, infringes patent rights by a taking or use of property for the benefit of the United States under circumstances not justifying the implication of a contract, the only redress of the owner is against the officer. *William Cramp, etc., Ship Bldg. Co. v. International Curtis Marine Turbine Co.*, (1918) 246 U. S. 28, 38 S. Ct. 271, 62 U. S. (L. ed.) 560, *affirmed* (C. C. A. 3d Cir. 1917) 236 Fed. 564, 151 C. C. A. 500.

Liability on implied contract—Consent to suit.—The owner of a patent right appropriated for the benefit of the United States by an officer of the United States, acting within the scope of his authority, and having knowledge of the patent right and its validity, with the consent of the owner, express or implied, upon the conception that compensation will be thereafter provided, may, under the statute law of the United States permitting suits against the United States on contracts, express or implied, recover, by way of implied contract, the compensation which may be rightly exacted because of such taking. *William Cramp, etc., Ship Bldg. Co. v. International Curtis Marine Turbine Co.*, (1918) 246 U. S. 28, 38 S. Ct. 271, 62 U. S. (L. ed.) 560, *affirmed* (C. C. A. 3d Cir. 1917) 238 Fed. 564, 151 C. C. A. 500.

IV. PLEADING (p. 300)

The pleadings in an action, whether in equity or at law, should be so plain, specific, definite and certain that the court may know on inspection thereof whether the suit is for infringement of letters patent, or merely to recover damages for the breach of a contract relating

to such patent. *Schrade v. Camillus Cutlery Co.*, (N. D. N. Y. 1917) 242 Fed. 523.

Alleging infringement by licensee.—In alleging infringement of a patent by a licensee (with limited rights) it is proper to allege the patent, the license, the extent and limitations of such license and the doing of acts constituting infringement, not warranted or authorized by such license, and that by doing such acts the patent is infringed. *Schrade v. Camillus Cutlery Co.*, (N. D. N. Y. 1917) 242 Fed. 523.

Vol. VII, p. 309, sec. 4920.

I. PLEADING AND PROOF IN GENERAL (p. 310)

Defenses—Revised patent.—An infringer who entered the field when the validity and scope of the infringed patent were still unquestioned and after an extensive market for the patented article had been created, cannot escape accountability for its infringing acts subsequent to the reissue of the patent on the theory that rights had been acquired during the seven years intervening between the issue of the original patent and the application for the reissue, though by the reissue the patentee loses all in the way of an accounting under the original patent. *Abercrombie, etc., Co. v. Baldwin*, (1917) 245 U. S. 198, 38 S. Ct. 104, 62 U. S. (L. ed.) 240.

Pleading.—See also under this title, vol. VII, p. 288, R. S. sec. 4919.

Vol. VII, p. 326, sec. 4921.

VI. COSTS (p. 368)

Costs on dismissal of suit for infringement.—When discretionary with court.

See *Parker v. Satebler*, (C. C. A. 9th Cir. 1917) 241 Fed. 589, 154 C. C. A. 365.

VII. LIMITATIONS AND LACHES (p. 370)

Financial inability to begin and prosecute for infringement will excuse delay. *Munger v. Perlman Rim Corp.*, (S. D. N. Y. 1917) 244 Fed. 799.

Vol. VII, p. 377, sec. 4929.

Test of invention.—The test of invention in design patents is precisely like that in mechanical; the question is whether the design was beyond the powers of the ordinary designer. *Steffens v. Steiner*, (C. C. A. 2d Cir. 1916) 232 Fed. 862, 147 C. C. A. 56; *F. I. A. T. v. A. Elliott Ranney Co.*, (C. C. A. 2d Cir. 1918) 249 Fed. 973.

A design patent must be viewed in its entirety, its effect is optical and it can no more be tested piecemeal than can a picture. *Bayley v. Standard Art Glass Co.*, (C. C. A. 2d Cir. 1918) 249 Fed. 478.

In the following cases design patents were considered with respect to invention and rules of decision applied. *Baker, etc., Co. v. N. D. Cass Co.*, (C. C. A. 2d Cir. 1915) 220 Fed. 918, 136 C. C. A. 484; *Denton v. Fulda*, (C. C. A. 2d Cir. 1915) 225 Fed. 537, 140 C. C. A. 521; *Strause Gas Iron Co. v. William M. Crane Co.*, (C. C. A. 2d Cir. 1916) 235 Fed. 126, 148 C. C. A. 620; *R. E. Dietz Co. v. Burr, etc., Co.*, (C. C. A. 2d Cir. 1917) 243 Fed. 592, 156 C. C. A. 290.

PENAL LAWS

Vol. VII, p. 395. [Act March 4, 1909, ch. 321.]

Constitutional basis of federal penal legislation.—"An Act committed within a state, whether for a good or bad purpose, or whether with an honest or a criminal intent, cannot be made an offense against the United States, unless it has some relation to the execution of a power of Congress, or to some matter within the jurisdiction of the United States. An Act not having any such relation is one in respect to which the state can alone legislate." *U. S. v. Fox*, (1878) 95 U. S. 670, 672, 24 U. S. (L. ed.) 538, per Mr. Justice Field, as quoted in *U. S. v. Barrow*, (1915) 239 U. S. 74, 36 S. Ct. 19, 60 U. S. (L. ed.) 155.

Vol. VII, p. 460, sec. 13.

III. INGREDIENTS OF OFFENSE

6. "Military Expedition or Enterprise" g. Number of Men Immaterial (p. 468)

"This section does not require that the expedition should have actually set out or any particular number of men, the crime being completed by the organization only. *U. S. v. Ybanez*, 53 Fed. 536." *U. S. v. Chakraborty*, (S. D. N. Y. 1917) 244 Fed. 287.

V. PROSECUTION OF OFFENSE

2. Sufficiency of Indictment (p. 472)

"It is sufficient to charge in the indictment that the defendants, by an act the character of which is of a warlike

nature, inaugurated and set on foot an enterprise for the furtherance of a military or warlike purpose against a kingdom or country with which the United States are at peace." *U. S. v. Chakraborty*, (S. D. N. Y. 1917) 244 Fed. 287.

Vol. VII, p. 484, sec. 19.

IV. RIGHT OR PRIVILEGE PROTECTED (p. 486)

Conspiracies against elective franchise—Bribery of voters.—A conspiracy to bribe voters at a general election within a state where presidential electors, a United States senator, and representatives in Congress are to be chosen is not an offense within this section. *U. S. v. Bathgate*, (1918) 246 U. S. 220, 38 S. Ct. 269, 62 U. S. (L. ed.) 676, wherein the court said "While the opinion in *U. S. v. Gradwell*, 243 U. S. 476, 37 S. Ct. 407, 61 U. S. (L. ed.) 857, [set forth in *PENAL LAWS*, vol. VII, p. 487] does not determine the precise question now presented, it proceeds upon reasoning which contravenes the theory urged by counsel for the government."

VII. INDICTMENT (p. 490)

Threaten or intimidate.—Allegations of "peremptorily ordering, requiring and directing" a voter are "without substance and of no legal effect." *U. S. v. Wilcox*, (D. C. R. I. 1917) 243 Fed. 993; *U. S. v. Welch*, (D. C. R. I. 1917) 243 Fed. 996, holding also that "a threat to use efforts to certain end cannot be regarded as in substance the same as a direct threat of the thing to be accomplished by such efforts," and that "if there is a conspiracy to coerce a voter the intended means should appear to have some adaptation to the end."

Vol. VII, p. 534, sec. 37.

II. Conspiracy to commit offense.

1. In general.
2. "Offense against the United States."
7. Particular offenses.
 - p. Violation of peonage abolition act.

III. Conspiracy to defraud.

1. Not limited to property rights.
11. Corruption of congressional elections.

VIII. Indictment.

4. For conspiracy to commit offense.
 - a. Sufficiency in general.
 - c. Description of offense contemplated.
 - j. Scheme to defraud by use of mails.
 - u. To violate Harrison Opium Act.

5. For conspiracy to defraud.

- a. Certainty and particularity.

IX. Evidence.

3. Knowledge, motive, or intent.
 - a. In general.

X. Trial, acquittal or conviction, and punishment.

4. Verdict.

II. CONSPIRACY TO COMMIT OFFENSE

1. In General (p. 537)

Failure to accomplish lawful purpose.—It is "settled doctrine that an unlawful conspiracy under § 37 of the Criminal Code to bring about an illegal act, and the doing of overt acts in furtherance of such conspiracy, is, in and of itself, inherently and substantively a crime, punishable as such irrespective of whether the result of the conspiracy has been to accomplish its illegal end. *United States v. Rabinowich*, 238 U. S. 78, 85, 86, 35 S. Ct. 682, 59 U. S. (L. ed.) 1211, 1213, 1214, 35 S. Ct. 682, and authorities there cited." *Goldman v. U. S.*, (1918) 245 U. S. 474, 38 S. Ct. 166, 62 U. S. (L. ed.) 410.

2. "Offense Against the United States" (p. 537)

Common-law offense.—It is an indictable offense at common law to counsel and solicit a person subject to registration not to register under the Selective Draft Act of May 18, 1917, § 5, in *WAR DEPARTMENT AND MILITARY ESTABLISHMENT*, vol. IX, p. 1159. While no statute of the United States makes such solicitation criminal, a conspiracy to commit the said common-law offense is punishable as a conspiracy to commit "any offense against the United States" under this section. *U. S. v. Galleanni*, (D. C. Mass. 1917) 245 Fed. 977.

7. Particular Offenses

p. Violation of Peonage Abolition Act (p. 544)

A defendant cannot be guilty of conspiracy to violate *PENAL LAWS*, § 269, by conspiring to return a person to a condition of peonage, if the condition contemplated was not that of "peonage" as the latter term has been authoritatively defined. *Taylor v. U. S.*, (C. C. A. 4th Cir. 1917) 244 Fed. 321, 156 C. C. A. 607.

III. CONSPIRACY TO DEFRAUD

1. Not Limited to Property Rights (p. 545)

Defrauding of a right.—Under the Selective Draft Act of May 18, 1917, § 5, in *WAR DEPARTMENT AND MILITARY ESTABLISHMENT*, vol. IX, p. 1159 "the United

States was entitled to have persons subject to registration perform their duty and register according to law; and a conspiracy to prevent their doing so was a conspiracy to deprive the United States of a right to which it was entitled, and therefore to defraud it, within the meaning of section 37. *U. S. v. Galleanni*, (D. C. Mass. 1917) 245 Fed. 977.

11. *Corruption of Congressional Elections* (p. 548)

A conspiracy to bribe voters at a general election within a state where presidential electors and members of Congress are to be chosen is not a conspiracy to commit an offense or to defraud the United States within the meaning of this section. *U. S. v. Bathgate*, (1918) 246 U. S. 220, 38 S. Ct. 269, 62 U. S. (L. ed.) 676, following *U. S. v. Gradwell*, (1917) 243 U. S. 476, 37 S. Ct. 407, 61 U. S. (L. ed.) 857.

VIII. INDICTMENT

4. *For Conspiracy to Commit Offense*

a. Sufficiency in General (p. 566)

In *U. S. v. Pierce*, (N. D. N. Y. 1917) 245 Fed. 878, the indictment there quoted in part was held sufficient to charge a conspiracy to violate the so-called Espionage Act of June 15, 1917, ch. 30, § 3, in *CRIMINAL LAW*, *ante*, this volume, p. 122.

c. Description of Offense Contemplated (p. 567)

"It is not essential to set forth the offense which is the object of the conspiracy with the same certainty and strictness as in an indictment for the substantive offense." *U. S. v. D'Arcy*, (D. C. R. I. 1916) 243 Fed. 739, also holding that "an indictment charging conspiracy to commit an offense need not negative exceptions found in the statute which defines the offense that is the object of the conspiracy."

j. Scheme to Defraud by Use of Mails (p. 569)

Where an indictment charged "that the defendants . . . unlawfully, etc., conspired, etc., together . . . for the purpose of executing the said scheme and artifice to defraud . . . and attempting to do so, to place and cause to be placed letters in the post office," this was a sufficient averment of a conspiracy to use the mails in execution of the alleged scheme to defraud. *Preeman v. U. S.*, (C. C. A. 7th Cir. 1917) 244 Fed. 1, 156 C. C. A. 429, citing *Stokes v. U. S.*, (1895) 157 U. S. 187, 15 S. Ct. 617, 39 U. S. (L. ed.) 667, and *Emanuel v. U. S.*, (C. C. A. 2d Cir. 1912) 196 Fed. 317, 116 C. C. A. 137.

u. To Violate Harrison Opium Act (p. 578)

An indictment charging conspiracy to obtain certain drugs for purposes other than those specified in the Harrison Opium Act of Dec. 17, 1914, vol. IV, p. 177, need not set forth specifically what was the wrongful object or purpose. *U. S. v. D'Arcy*, (D. C. R. I. 1916) 243 Fed. 739, where the court also said: "While the particular paragraphs which set forth the overt acts contain no allegation of place, I am of the opinion that upon reading the indictment as a whole it sufficiently fixes the locus of the overt acts."

In *Thurston v. U. S.*, (C. C. A. 5th Cir. 1917) 241 Fed. 335, 154 C. C. A. 215, the allegations there recited in substance were held sufficient to put the defendants on trial on the charge of conspiracy to violate the Harrison Narcotic Law of Dec. 17, 1914, vol. IV, p. 177.

5. *For Conspiracy to Defraud*

a. Certainty and Particularity (p. 578)

Tenor of written instrument.—In an indictment for conspiracy to prevent persons from registering under the Selective Draft Act of May 18, 1917, § 5, in *WAR DEPARTMENT AND MILITARY ESTABLISHMENT*, vol. IX, p. 1159, the failure to incorporate into the indictment an exact copy of the statement, the publication of which was alleged as an overt act done in pursuance of the conspiracy, the indictment containing a translation of such statement, was not a good ground of demurrer. *U. S. v. Galleanni*, (D. C. Mass. 1917) 245 Fed. 977.

IX. EVIDENCE

3. *Knowledge, Motive, or Intent*

a. In General (p. 593)

Intent to use the mails, in violation of *PENAL LAWS*, § 215, vol. VII, p. 812, is sufficiently shown by evidence that in the execution of the conspiracy the use of the mails was indispensable. *Preeman v. U. S.*, (C. C. A. 7th Cir. 1917) 244 Fed. 1, 156 C. C. A. 429.

X. TRIAL, ACQUITTAL OR CONVICTION, AND PUNISHMENT

4. *Verdict* (p. 601)

In a prosecution for violation of *PENAL LAWS*, vol. VII, p. 812, § 215, on an indictment also containing counts for conspiracy to violate that section, where the conspiracy counts set forth as overt acts the mailing of letters, some of which appeared in the counts under said section 215, yet each of the conspiracy counts set forth as overt acts the mailing of letters not set out in the counts under section 215, as the letters mailed in execution of

the scheme, conviction on all the counts did not constitute a double conviction. *Freeman v. U. S.*, (C. C. A. 7th Cir. 1917) 244 Fed. 1, 156 C. C. A. 429, distinguishing the "doubts expressed by Judge Denison in the recent case of *Hendrey v. U. S.*, 233 Fed. 5, 147 C. C. A. 75."

Vol. VII, p. 747, sec. 190.

Severity of sentence.—Conviction for stealing a money order stamp could not be reversed because of a sentence seemingly over severe, but not excessive in a legal sense nor an abuse of discretion, even though the court may have taken into consideration the fact that the evidence showed the defendant to have been guilty of subornation of perjury in the case. *Peterson v. U. S.*, (C. C. A. 4th Cir. 1917) 246 Fed. 118, 158 C. C. A. 344.

Vol. VII, p. 754, sec. 194.

I. CONSTRUCTION AND APPLICATION

2. Definitions (p. 756)

Authorized depository for mail matter.

—Boxes placed by tenants for the receipt of mail in the halls of buildings in which they have their places of business must be deemed to be authorized depositories for mail matter within the meaning of this section, in view of a regulation promulgated as an order of the Post Office Department prior to the date of an alleged offense constituting "any letter box or other receptacle," etc., "a letter box for the receipt or delivery of mail matter within the meaning of" this Act. *Rosen v. U. S.*, (1918) 245 U. S. 467, 38 S. Ct. 148, 62 U. S. (L. ed.) 406.

3. Period of Federal Protection for Mail Matter (p. 757)

Mail deposited in privately owned box.

—The protection afforded by this section to mail matter deposited in an "authorized depository" does not cease with such deposit in a privately owned mail box constituted an "authorized depository" by a valid postal regulation, but continues so long as the letter remains in the box. *Rosen v. U. S.*, (1918) 245 U. S. 467, 38 S. Ct. 148, 62 U. S. (L. ed.) 406.

Vol. VII, p. 788, sec. 211.

II. MAILING OBSCENE MATTER

2. Test of Obscenity (p. 791)

"It is not enough that the letter or publication merely relate to sexual matters and illicit sexual relations, but it must be clothed in language and contain expressions which, with reasonable persons, tend to excite the sexual desires or

passions or corrupt the morals of the reader in that direction." *U. S. v. Davidson*, (N. D. N. Y. 1917) 244 Fed. 523, holding that language in a letter charging a woman with being a prostitute, and surrounded by prostitutes and bastards, did not have such tendency.

III. LETTERS (p. 794)

"**Filthy**," etc.—"The cases have been substantially uniform (I am not informed of any exception) in holding that a 'filthy' writing or letter, as described in the statute, must be 'filthy' in its relation to or reference to the sexual relations or desires. There are many filthy writings which have no reference to that subject, and I find no case which brings such writings or communications within the statute. . . . I am not content with the restricted construction placed by the courts on the language of section 211 of the Criminal Code, where it adds to the words 'every obscene, lewd, or lascivious,' the words 'and every filthy . . . letter, writing . . . of an indecent character,' as it seems to me it was not the purpose of Congress to restrict nonmailable letters to written or printed matter which relates to sexual acts and conduct and matters which will excite or tend to excite libidinous thoughts and sexual desires or debase and degrade the mind and morals of the reader in the direction indicated. . . . I think the language 'filthy . . . letter . . . of an indecent character' brings within the statute a communication sent to another through the mails which would not be covered by the preceding words obscene, lewd, and lascivious if it be a filthy letter of an indecent character, even though it is not of a character which would promote or excite sexual desires and emotions." *U. S. v. Davidson*, (N. D. N. Y. 1917) 244 Fed. 523.

V. INDICTMENT (p. 795)

Joinder of counts.—A count charging a violation of this section by mailing a "filthy" letter was properly joined with a count charging violation of Penal Laws, § 212, by mailing a letter having "indecent" and "defamatory" terms on the envelope, where the acts of defendant were directed against one and the same person, were of the same general nature, and were clearly closely connected in point of time. *U. S. v. Davidson*, (N. D. N. Y. 1917) 244 Fed. 523.

Vol. VII, p. 803, sec. 212.

"**Defamatory**" language.—Placing on an envelope an abbreviation following the female addressee's name known to the writer and to the recipient of the enclosed letter, as disclosed by the contents of such letter to the recipient

thereof and to no one else, to charge immorality, etc., but which abbreviation to all others would have only an innocent signification, is not a violation of this section. *U. S. v. Davidson*, (N. D. N. Y. 1917) 244 Fed. 523, thus holding as to word "Pros." alleged to be an abbreviation of "prostitute"; since "of itself, 'Pros.' does not suggest, even remotely, anything either indecent, lewd, lascivious, obscene, libelous, scurrilous, or of a defamatory character."

Vol. VII, p. 812, sec. 215.

I. Constitutionality.

III. Essentials.

1. In general.
3. Scheme or artifice to defraud.
 - a. What constitutes.
4. Use of mails.

IV. Procedure.

2. Indictment.
 - a. In general.
 - b. Scheme to defraud.
 - c. Use of mails.
4. Trial.
 - b. Evidence and instructions.

I. CONSTITUTIONALITY (p. 814)

Religious freedom secured by the Constitution is not infringed by this statutory provision so far as it undertakes to punish a person for pretending to entertain certain views, alleged by him to be of a religious character, for the false and fraudulent purpose of procuring money or other things of value from third parties by the use of the post office establishment, where the defendant's good faith is the cardinal question in determining his guilt. *New v. U. S.*, (C. C. A. 9th Cir. 1917) 245 Fed. 710, 158 C. C. A. 112.

III. ESSENTIALS

1. In General (p. 815)

Limitations.—If the scheme or artifice was devised more than three years prior to the return of the indictment, but was in existence and the defendant was operating under it within three years, the case would be without the statute of limitations and might be prosecuted. *Bowers v. U. S.*, (C. C. A. 9th Cir. 1917) 244 Fed. 641, 157 C. C. A. 89.

3. Scheme or Artifice to Defraud

a. What Constitutes (p. 816)

In *New v. U. S.*, (C. C. A. 9th Cir. 1917) 245 Fed. 710, 158 C. C. A. 112, the court affirmed a conviction of the defendant for using the mails to obtain money, etc., by falsely pretending to be one who had attained the supernatural state of self-immortality in the body by abstinence

from divers evil practices, thus enabling him to conquer disease, death, poverty, and misery, and that this power could be transmitted by him to others who were willing to accept his teachings and pay therefor the sums demanded by him.

Frauds perpetrated upon particular investors in order to prop up a failing enterprise not fraudulent in itself are not the class of frauds denounced by this section. There is a "real and vital difference between business projects which end and result in loss and disaster to the investors, and schemes which were intended to defraud their victims." *U. S. v. Bachman*, (E. D. Pa. 1917) 246 Fed. 1009, denying a motion in arrest and for a new trial after verdict of conviction.

"Defraud."—It is not necessary to criminality under this section that nothing whatever is to be given in return for the money. *Freeman v. U. S.*, (C. C. A. 7th Cir. 1917) 244 Fed. 1, 156 C. C. A. 429.

4. Use of Mails (p. 825)

In general.—"Under section 215 it is not essential that the use of the mails be contemplated by the fraudulent scheme. It may have been carefully designed to avoid using the mails altogether, but if in the execution of the scheme the mails are in fact used, the Act is violated. *Farmer v. U. S.* 223 Fed. 903, 139 C. C. A. 341." *Freeman v. U. S.* (C. C. A. 7th Cir. 1917) 244 Fed. 1, 156 C. C. A. 429.

Mailing by agent.—Where drafts and checks received from victims of a fraudulent scheme by those actively engaged in it were turned over to the defendant who rendered guilty assistance by turning them over to a local bank for collection, he thereby made the bank his innocent agent and knowledge was legally imputable to him of the custom of banks to forward such paper for collection by mail, so that when the bank deposited the letters of transmittal in the mails, he, in contemplation of law, caused it to do so. *Spear v. U. S.*, (C. C. A. 8th Cir. 1917) 246 Fed. 250, 158 C. C. A. 410.

Letters to victims after receipt of money.—"The scheme alleged, being one for obtaining money through the fraudulent representations and practices set forth, the use of the mails, even after the money is received, for the purpose of assisting in retaining the money, or to convey to the victim assurances calculated to lull him into inaction and to postpone, perhaps indefinitely, his taking action in respect to his loss, is within the purview of the law, which condemns depositing in or taking from the mails any letters, etc., for the purpose of executing any scheme to defraud." *Freeman v. U. S.*, (C. C. A. 7th Cir. 1917) 244 Fed. 1, 156 C. C. A. 429.

IV. PROCEDURE

2. Indictment

a. In General (p. 828)

In *New v. U. S.*, (C. C. A. 9th Cir. 1917) 245 Fed. 710, 158 C. C. A. 112, affirming a conviction for violation of this section, the court said: "It [the indictment] alleges various pretensions and promises of the defendant. New, which are alleged to have been false and fraudulent, and to have been made for the purpose of obtaining money and other things of value from others, and it alleges that in pursuance of that fraudulent scheme he deposited in the post office certain letters, one of which was set out in each count of the indictment. Those alleged facts are essential elements of the offense denounced by the statute upon which the indictment was based, but all that are essential."

In *Riddell v. U. S.*, (C. C. A. 9th Cir. 1917) 244 Fed. 695, 157 C. C. A. 143, the indictment there set forth in substance and charging a scheme and artifice to use the mail for the purpose of selling certain ten acre tracts of worthless land represented to be of high grade and quality, was held sufficient to charge a violation of this statute.

b. Scheme to Defraud (p. 828)

Degree of particularity.—"The gist of the offense is the improper use of the mails. While the fraudulent design is essential, it is merely an element of the crime. As where an indictment charges burglary to commit theft, the theft is not described with the same particularity as if theft were the offense, so, in charging the use of the mails to defraud, the fraud need not be stated with the technical details required when swindling, or a like crime, is the subject of the indictment. . . . There is no rule that the description of a fraudulent scheme should mention all the ancillary devices." *Whitehead v. U. S.*, (C. C. A. 5th Cir. 1917) 245 Fed. 385, 157 C. C. A. 547.

In an indictment containing counts for conspiracy under *PENAL LAWS*, § 37, vol. VII, p. 534, to violate this section 215, and counts for a violation of this section 215, "it is necessary only to set forth generally the scheme or artifice which the defendants devised, and to charge the use of the mails in execution of the scheme. . . . And the scheme itself is not required to be charged with the detail and particularity necessary in an indictment for the specific offense of obtaining property through false representations." *Freeman v. U. S.*, (C. C. A. 7th Cir. 1917) 244 Fed. 1, 156 C. C. A. 429.

In an indictment for using the mails in execution of a scheme to defraud creditors of bankrupts by using the mails, if defendants fraudulently devised a scheme

to falsely represent their commercial collection "agency" as having done things which it had not, or as having information concerning, or taken steps affecting certain bankrupt debtors, which it had not, the fraudulent scheme was the same whether the alleged "agency" was a corporation, partnership, or what not, and it was not necessary to allege its capacity as a business entity. *Freeman v. U. S.*, (C. C. A. 7th Cir. 1917) 244 Fed. 1, 156 C. C. A. 429.

Where the first count set out the fraudulent scheme in detail it was sufficient for the following counts to refer to and make the first count a part thereof without repeating the details. *Riddell v. U. S.*, (C. C. A. 9th Cir. 1917) 244 Fed. 695, 157 C. C. A. 143.

c. Use of Mails (p. 833)

Mailing of letters, etc.—Where the indictment charged that the letters therein set out were mailed "for the purpose of executing the said scheme and artifice to defraud, and for the purpose of attempting so to do," and the letters themselves did not indicate that they could not and did not have such tendency, but, on the contrary, carry the inference that they could and did, there was no merit in the contention that it was not sufficiently alleged that they were mailed for the purpose of executing the scheme. *Freeman v. U. S.*, (C. C. A. 7th Cir. 1917) 244 Fed. 1, 156 C. C. A. 429.

4. Trial

b. Evidence and Instructions (p. 838)

Evidence.—The only essential elements being the fraudulent scheme and the use of the mails in its execution, the extent of success of the scheme as charged is in no manner necessary to be shown. *Freeman v. U. S.*, (C. C. A. 7th Cir. 1917) 244 Fed. 1, 156 C. C. A. 429.

If prior to and at the time a letter set forth as an overt act was mailed by the defendant the alleged fraudulent scheme had been devised, and the defendant intentionally and for the purpose of carrying out the scheme wrote the letter described and mailed it within three years prior to the filing of the indictment, it was not necessary that the letter should on its face show that it was in furtherance of the scheme to defraud in order to render it admissible. *Bowers v. U. S.*, (C. C. A. 9th Cir. 1917) 244 Fed. 641, 157 C. C. A. 89.

Evidence to prove intent.—On the trial of an indictment for using the mails to solicit from physicians, surgeons, and dentists accounts for collection upon commission, with the purpose of converting to notes to sec. 218 *supra*, this page. vertisement published by the defendant

while he was carrying on such business of collecting offering to sell a half interest in "an exclusive business now paying more than \$250 per month" was admissible as tending to show representations which could be made good only by appropriating collections. *Clark v. U. S.*, (C. C. A. 9th Cir. 1917) 245 Fed. 112, 157 C. C. A. 408.

As the fraudulent intent is one of the material allegations in the indictment, evidence of other and similar ventures by the accused is properly admissible as bearing on the question of intent. *Riddell v. U. S.*, (C. C. A. 9th Cir. 1917) 244 Fed. 695, 157 C. C. A. 143.

Documentary evidence.—*Letters* set forth in the indictment as having been mailed in execution of the scheme to defraud need not be to or from the intended victim of the fraud in order to be admissible. The execution of the scheme may be most effectually furthered, and the purpose of its execution or attempted execution most directly served, through communications by mail between the persons who concocted or entered into it. *Freeman v. U. S.*, (C. C. A. 7th Cir. 1917) 244 Fed. 1, 156 C. C. A. 429.

"That the letters alleged in the indictment to have been deposited in the mails in pursuance of the alleged scheme were admissible in evidence, of course goes without saying." *New v. U. S.*, (C. C. A. 9th Cir. 1917) 245 Fed. 710, 158 C. C. A. 112.

Sufficiency of evidence.—In *Sprinkle v. U. S.*, (C. C. A. 4th Cir. 1917) 244 Fed. 111, 156 C. C. A. 539, the evidence was held sufficient to sustain a conviction for violation of this section by using the mails to obtain purchasers of pianos at a "sale price" fraudulently designed to look like a "marked down" price.

In *Bowers v. U. S.*, (C. C. A. 9th Cir. 1917) 244 Fed. 641, 157 C. C. A. 89, the evidence there recited was held to be clearly sufficient for submission to the jury under appropriate instructions, and a conviction of using the mails in execution of a scheme to defraud by the sale of land.

Instructions.—Where the court instructs on a particular subject and the defendant desires more specific instructions thereon he should take exception to the charge, bringing to the court's notice the ground of exception. *Riddell v. U. S.*, (C. C. A. 9th Cir. 1917) 244 Fed. 695, 157 C. C. A. 143.

Vol. VII, p. 847, sec. 218.

Conviction for aiding and abetting under indictment as principal.—One who knowingly aided or assisted another to alter a money order, though the change was not made by him, may be held guilty under an indictment charging him as a principal, under PENAL LAWS, sec. 332, vol. VII, p. 984. *Dean v. U. S.*, (C. C. A. 5th Cir. 1917) 246 Fed. 568, 158 C. C. A. 538.

Evidence was held sufficient to sustain a conviction under this section for having altered a postal money order in *Dean v. U. S.*, (C. C. A. 5th Cir. 1917) 246 Fed. 568, 158 C. C. A. 538, where the evidence is recapitulated.

Vol. VII, p. 886, sec. 269.

Peonage defined.—"In the case of *Clyatt v. U. S.*, [197 U. S. 207, 25 S. Ct. 429, 49 U. S. (L. ed.) 726] the supreme court affords us a clear definition of the term." *Taylor v. U. S.*, (C. C. A. 4th Cir. 1917) 244 Fed. 321, 156 C. C. A. 607, holding that under the circumstances of the case, the defendant was not guilty of violating this section, and that a person cannot be deemed guilty of peonage where he has held another in involuntary servitude for the purpose of having him comply with an agreement to work for a certain term.

"Returns . . . to a condition of peonage."—A defendant cannot be convicted of returning another to a condition of peonage where the latter had never been in that condition. *Taylor v. U. S.*, (C. C. A. 4th Cir. 1917) 244 Fed. 321, 156 C. C. A. 607.

Vol. VII, p. 935, sec. 287.

Fish in a pound.—A conviction for larceny of fish from a pound on the high seas off the New Jersey coast by taking the fish with hook and line from a boat moored to the pound, was affirmed in *Miller v. U. S.*, (C. C. A. 3d Cir. 1917) 242 Fed. 907, 155 C. C. A. 495, L. R. A. 1918A 545.

Vol. VII, p. 984, sec. 332.

Offenses against postal service.—See *Dean v. U. S.*, (C. C. A. 5th Cir. 1917) 246 Fed. 568, 158 C. C. A. 538, as cited in notes to sec. 218, *supra*, this page.

Violation of Selective Draft Law of May 18, 1917. See *Ruthenberg v. U. S.*, (1918) 245 U. S. 480, 38 S. Ct. 168, 62 U. S. (L. ed.) 414.

POSTAL SERVICE

Vol. VIII, p. 38, sec. 3834.

II. BREACH OF BOND

2. Registered Letter or Parcel (p. 40)

To the same effect as the original note see *U. S. Fidelity, etc., Co. v. U. S.*, (C. C. A. 9th Cir. 1917) 246 Fed. 433, 158 C. C. A. 497.

Vol. VIII, p. 205. [*Readjustment of rates for transportation of mail.*]

Purpose of Act.—This Act of March 2, 1907, was designed to make a reduction in the compensation then being paid to railroads, and a railroad has an option of declining the readjusted terms and refusing to further transport the mails, but a protest on the part of the railroad will not have the effect of restoring the old rates or reserving to it compensation at such rates. *Delaware, etc., R. Co. v. U. S.*, (1916) 51 Ct. Cl. 426.

Vol. VIII, p. 212. [*Compensation for increased weight of mails caused by parcel post.*]

Construction.—By the paragraph the Postmaster General was "authorized" to

add to the compensation paid for transportation on railroad routes "not exceeding five per centum per annum," on account of the increased weight of mails resulting from the inauguration of the parcel post system. In determining the additional compensation to be paid, certain railroads were allowed five per centum, others less than five per centum, and to some no additional compensation was made. Congress, by the use of the words "authorized to add to the compensation," prescribed a duty for the Postmaster General and did not lodge such discretion in him as to permit the increase to be made in whole or in part or denied, as he should determine. The words "not exceeding five per centum" used in the Act meant that there should be added to the stated and fixed compensation five per centum and not exceeding five per centum and there is nothing in the Act upon which a discretion to pay a lesser sum was to operate. The Postmaster General did not act judicially in the premises and his action is not conclusive when brought in question in this court. *Atchison, etc., Ry. Co. v. U. S.*, (1917) 52 Ct. Cl. 338.

PRISONS AND PRISONERS

Vol. VIII, p. 298, sec. 2.

Conclusiveness of board's opinion.—It must appear to the board by showing in the manner prescribed that there is reasonable probability that the applicant for a parole will abide by the law; and if in the belief or judgment of the board his release is not incompatible with the wel-

fare of society, the board may, in its discretion, authorize parole. The opinion called for is that of the board, and the power to authorize release is vested exclusively in the board to be exercised as it may, in its wisdom, see fit. *Redman v. Duehay*, (C. C. A. 9th Cir. 1917) 246 Fed. 283, 159 C. C. A. 13.

PUBLIC CONTRACTS

Vol. VIII, p. 361, sec. 3744.

Nature of statute.—To the same effect as the original note see *Occidental Const. Co. v. U. S.*, (C. C. A. 9th Cir. 1917) 245 Fed. 817, 158 C. C. A. 157.

Implied contract.—The United States Government is not liable for damages to

property unlawfully taken into the possession of the employés. *Occidental Const. Co. v. U. S.*, (C. C. A. 9th Cir. 1917) 245 Fed. 817, 158 C. C. A. 157, wherein the court said: "There is a good reason why the government should pay for that which it actually receives and of which it re-

tains the benefit through the unauthorized act of its employes. But if it is to be held that the government is bound to all the incidents of an implied contract in every case where the oral agreement of its employes has been actually performed, what becomes of the protection intended to be afforded by section 3744?"

Vol. VIII, p. 374. [*Act of Aug. 13, 1894.*]

I. CONSTRUCTION

4. Labor and Materials Included (p. 379)

Groceries and provisions furnished a contractor for a public work for use in a boarding house which, on account of the absence of other accommodations, it was obliged to maintain for its laborers, are materials used in the prosecution of the work, within the meaning of this Act as amended, and of the bond given in pursuance of its requirements, though they would not have been such had the boarding house been conducted by the contractor as an independent enterprise undertaken solely for the sake of profit. *Brogan v. National Surety Co.*, (1918) 246 U. S. 257, 38 S. Ct. 250, 62 U. S. (L. ed. 703.

V. JURISDICTION (p. 383)

Federal courts.—Federal courts have jurisdiction of actions under this Act. *Equitable Surety Co. v. Illinois Surety Co.*, (S. C. 1918) 94 S. E. 882.

VI. ACTION ON BOND (p. 384)

Limitation of action.—Prohibition or other extraordinary legal remedy to prevent further proceedings in an action on the bond of a public contractor, brought under this Act as amended, will not be granted by the federal Supreme Court on the ground that the rights of some of the claimants were asserted after the one-year period of limitation which the statute fixes. *Ex p. Southwestern Surety Ins. Co.*, (1917) 247 U. S. 19, 38 S. Ct. 430, 62 U. S. (L. ed.) 961.

Vol. VIII, p. 393, sec. 21.

Contract authorizing Secretary to waive damages.—In *McIntyre v. U. S.*, (1917) 52 Ct. Cl. 503, a contract was construed which was made prior to this Act and authorized the Secretary of the Treasury in his discretion to remit the whole or any part of liquidated damages.

PUBLIC LANDS

Vol. VIII, p. 527, sec. 1.

In a suit to recover purchase money it was held that an odd-numbered section embraced in the grant of public lands to a railroad pre-empted by an entryman subsequent to the filing of the railroad's map of general route, but prior to its map of definite location, was open to pre-emption entry under the Public Land Laws. *Laughlin v. U. S.*, (1917) 52 Ct. Cl. 292.

Vol. VIII, p. 528, sec. 2. [*Act of March 26, 1908.*]

An action for repayment of excess was sustained by the Court of Claims in *Maginnis v. U. S.*, (1917) 52 Ct. Cl. 271.

Vol. VIII, p. 543, sec. 2289.

V. RIGHTS OF ENTRYMAN (p. 551)

Forcible entry.—This statute does not deprive a party in peaceful possession of the right to maintain an action of forcible

entry and detainer under a state statute against one who, by force or stealth obtains possession in order to initiate a homestead claim. *Denee v. Aukeny*, (1918) 246 U. S. 208, 38 S. Ct. 226, 62 U. S. (L. ed.) 669, *affirming* (1915) 85 Wash. 322, 148 Pac. 15.

Vol. VIII, p. 629, sec. 2363.

The statute of limitations of six years, even though not pleaded, bars suit under this section in the Court of Claims to recover purchase money. *Quinn v. U. S.*, (1917) 52 Ct. Cl. 496.

Vol. VIII, p. 654, sec. 2.

Rights conferred and vested by the Right-of-Way Act of Dec. 15, 1870, ch. 2, 16 Stat. L. 395, were not disturbed by this section. *Salt Lake Invest. Co. v. Oregon Short Line R. Co.*, (1918) 246 U. S. 446, 38 S. Ct. 348, 62 U. S. (L. ed.) 823, *affirming* (1915) 46 Utah 203, 148 Pac. 439.

Vol. VIII, p. 692, sec. 1.

Agreement to convey after vesting of title is in violation of the decisions of the Land Department, against public policy, and gives no right of action for breach. *Eymann v. Wright*, (Cal. 1917) 169 Pac. 1037.

Vol. VIII, p. 702, sec. 2.

A corporation cannot become an assignee by operation of law, by virtue of an attachment or a judgment. *Stockmen's Nat. Bank v. Hofeldt*, (1917) 54 Mont. 205, 169 Pac. 48.

Vol. VIII, p. 716, sec. 2480.

Decision by Secretary of Interior as to character of land cannot be collaterally attacked. *State v. New*, (1917) 280 Ill. 393, 117 N. E. 597.

Vol. VIII, p. 747, sec. 5.

Determination by Land Department.—If the Secretary of the Interior has made a mistake in overruling the contention by a state that the title to certain land passed to it under the Act of Aug. 3, 1892, ch. 362, 27 Stat. L. 347, and in deciding that a superior title was acquired by a corporation found to be a bona fide purchaser, the error cannot be redressed by a suit by the state to quiet title and to enjoin the issuance of patents to such corporation, where such decision was not arbitrary and was made upon full hearing. "The remedy must be sought in the courts after the issuance of patent." *Minnesota v. Lane*, (1918) 247 U. S. 243, 38 S. Ct. 508, 62 U. S. (L. ed.) 1098.

Bona fide purchasers.—In *Krueger v. U. S.*, (1918) 246 U. S. 69, 38 S. Ct. 262, 62 U. S. (L. ed.) 582, affirming (C. C. A. 8th Cir. 1915) 228 Fed. 97, 142 C. C. A. 503, a suit by the government to cancel a land patent, it was held, on the evidence, that the defendant had not sustained the burden of showing she was a bona fide purchaser, but that under the circumstances she had constructive notice of fraud.

Vol. VIII, p. 759, sec. 1.

"The proviso must be given the effect of a curative measure confined to lands theretofore patented, and not granting dispensation for frauds or mistakes thereafter occurring." *U. S. v. St. Paul, etc., R. Co.*, (1918) 247 U. S. 310, 38 S. Ct. 525, 62 U. S. (L. ed.) 1130, reversing (C. C. A. 9th Cir. 1915) 225 Fed. 27, 139 C. C. A. 301, and holding the proviso was not a bar to a suit by the government to annul a patent applied for and issued long after its enactment.

Vol. VIII, p. 785, sec. 2477.

Acceptance.—Under the Colorado statute, the public lands were subject to the rights of an entryman until the board of county commissioners declared the section and township lines on the public domain public highways. *Korf v. Itten*, (Colo. 1917) 169 Pac. 148.

Vol. VIII, p. 802, sec. 1.

A railroad indemnity grant is subject to the requirement of this section. *U. S. v. Lane*, (1917) 46 App. Cas. (D. C.) 74.

Vol. VIII, p. 810, sec. 2.

Purpose and effect.—This Act "neither enlarges the Act of 1891 in such manner as to supersede the Act of 1896, nor reinstates sections 2339 and 2340 of the Revised Statutes in so far as those sections have been affected by the Act of 1896." *Utah Power, etc., Co. v. U. S.*, (C. C. A. 8th Cir. 1915) 230 Fed. 328, 144 C. C. A. 470.

Vol. VIII, p. 816, sec. 1. [Act Feb. 25, 1885.]

Color of title.—The clause at the close of this section prohibits "merely the assertion of an exclusive right to use or occupation by force or intimidation or by what would be equivalent in effect to an inclosure." *Omaechevarria v. Idaho*, (1918) 246 U. S. 343, 38 S. Ct. 323, 62 U. S. (L. ed.) 763.

Under Rem. & Bal. (Wash.) Code, § 811, an action of forcible entry and detainer will lie against one who, to initiate a homestead claim, forcibly enters upon land, which was surrounded by a fence, where the occupant was holding it under claim of right and color of title, and he and his predecessor had so held it for more than twenty years. *Denee v. Ankeny*, (1918) 246 U. S. 208, 38 S. Ct. 226, 62 U. S. (L. ed.) 669, affirming (1916) 91 Wash. 693, 157 Pac. 1199.

A state statute prohibiting any person having charge of sheep from allowing them to graze on the federal public domain previously occupied by cattle was valid and not in conflict with this Act. *Omaechevarria v. Idaho*, (1918) 246 U. S. 343, 38 S. Ct. 323, 62 U. S. (L. ed.) 763, affirming (1915) 27 Idaho 797, 152 Pac. 280, which was a conviction in a prosecution under the state statute.

Vol. VIII, p. 869, sec. 8.

Scope of statute.—The correction of a mistake is not an attempt to vacate or annul the patent. *Wilson v. U. S.*, (1917) 245 U. S. 24, 38 S. Ct. 21, 62 U. S. (L. ed.) 128, affirming (C. C. A. 8th Cir. 1915) 227 Fed. 827, 142 C. C. A. 351, and holding that the statute did not apply to an action by the government to quiet its

title to land erroneously excluded from a patent under the mistaken assumption that a lake existed within meandered lines run in making the survey.

Effect of fraud on running of bar.—Where fraud is concealed by the wrongdoers the statute does not begin to run until discovery of the fraud. *Exploration Co. v. U. S.*, (1918) 247 U. S. 435 38 S. Ct. 571, 62 U. S. (L. ed.) 1200, (following *Bailey v. Glover*, (1875) 21 Wall. 342, 22 U. S. (L. ed.) 636, and *overruling dictum*

in *U. S. v. Winona, etc., R. Co.*, (1897) 165 U. S. 463, 17 S. Ct. 368, 41 U. S. (L. ed.) 789); *U. S. v. Booth-Kelly Lumber Co.*, (D. C. Ore. 1917) 246 Fed. 970.

Recovery for fraud.—The government is not barred by this section of the right to recover the value of lands to which a patent has been fraudulently obtained by the defendant. *U. S. v. Whited* (1918) 246 U. S. 552, 38 S. Ct. 367, 62 U. S. (L. ed.) 879, *reversing* (C. C. A. 5th Cir. 1916) 232 Fed. 139, 146 C. C. A. 331.

PUBLIC OFFICERS AND EMPLOYEES

Vol. VIII, p. 951, sec. 2.

Presumption as to legal appointment.—Where the compensation of an officer is fixed by statute it may not be diminished by regulation of a department or order of the president unless empowered thereto by Congress, but where appointment to two certain offices is claimed and to so hold

would involve a construction that the appointment was invalid under the Act of July 31, 1894, 28 Stats. 205, the court must adopt the view that a legal appointment was contemplated, and hence that the claimant was not appointed to two offices. *McMath v. U. S.*, (1916) 51 Ct. Cl. 356.

RAILROADS

Vol. VIII, p. 1208, sec. 1.

I. Introductory.

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c. Recovery by widow and children.

(2) Actions by widow.

7. Question for court and jury.

I. INTRODUCTORY

3. "Common Carrier by Railroad"

a. In General (p. 1215)

Joinder of carrier and employee as defendants.—An employee of a railway company engaged in interstate commerce cannot maintain a joint action against the company and its engineer under this Act, where concurring negligence of both defendants is alleged and also a violation of the federal Safety Appliance Act. *Lee v. Central of Georgia R. Co.*, (1917) 147 Ga. App. 428, 94 S. E. 558.

4. Paramount to State Laws

d. State Workmen's Compensation Acts (p. 1220)

Election of Remedies.—A judgment against plaintiff in a suit brought on the

federal Employers' Liability Act, on the ground that the party injured was not employed in interstate commerce at the time of the injury, is no bar to proceeding under the state Workmen's Compensation Act. *Jackson v. Industrial Board*, (1917) 280 Ill. 526, 117 N. E. 705, holding that such judgment, though rendered on defendant's demurrer, concluded the defendant as to the question of the character of plaintiff's employment involved in the judgment.

Where carrier not negligent.—An employee of a railroad common carrier injured while engaged in interstate commerce, though without any negligence on the part of the carrier, cannot recover under a state Workmen's Compensation Act. *Walker v. Chicago, etc., R. Co.*, (Ind. App. 1917) 117 N. E. 969.

Where the federal Employers' Liability Act affords a remedy to an injured employee, he cannot recover under the state Workmen's Compensation Act. *Dickinson v. Industrial Board*, (1917) 280 Ill. 342, 117 N. E. 438.

II. EMPLOYER ENGAGED IN INTERSTATE COMMERCE

2. Railroad Wholly in One State

c. Electric Street Railroad (p. 1226)

An interurban electric railway operated entirely within the state may be engaged in interstate commerce. *Cholerton v. Detroit etc., Ry.*, (Mich. 1917) 165 N. W. 606.

III. EMPLOYEE ENGAGED IN INTERSTATE COMMERCE

2. Employed in Interstate Commerce

a. General Rule and Tests (p. 1236)

"It is the employment that determines whether or not the injury to the employee is within the purview of that Act, and not the act of the employee just at the time of his injury." *Jackson v. Industrial Board*, (1917) 280 Ill. 526, 117 N. E. 705.

Service "preliminary to the erection of a structure which might eventually form a part of a roadbed used in interstate commerce" "had no connection, even remote, with transportation." *Dickinson v. Industrial Board*, (1917) 280 Ill. 342, 117 N. E. 438.

d. Employee Engaged in Construction or Repairs (p. 1254)

Employee within the statute—*Miscellaneous construction or repair*.—A member of a bonding crew who was injured while they were preparing to resume the work of bonding the rails of the track of an electric railway company which operated wholly within the state, but transported shipments in interstate commerce, was an employee within this Act. *Chol-*

erton v. Detroit, etc., R. Co., (Mich. 1917) 165 N. W. 606.

A section foreman riding on a handcar with his men on the way to repair a supposed washout of an interstate track was within this Act. *Atlantic Coast Line R. Co. v. Tomlinson*, (Ga. App. 1918) 94 S. E. 909.

IV. INJURIES TO EMPLOYEES

1. Negligence Generally

a. Basis of Liability (p. 1277)

Negligence is essential to recovery and the plaintiff must prove it even where the local state statute provides that in actions against railroads for damages proof of injury inflicted by an engine propelled by steam shall be prima facie evidence of negligence. *New Orleans, etc., R. Co. v. Harris*, (1918) 247 U. S. 367, 38 S. Ct. 535, 62 U. S. (L. ed.) 1167, *reversing* (Miss. 1916) 71 So. 913 mem.

b. Relation of Negligence to Injury (p. 1278)

Negligence must have been proximate cause.—The death of a brakeman in a rear-end collision cannot be said not to "result in part from the negligence of any of the employees" of the railway company, within the meaning of this section, where, but for the negligence of such employees, neither train would have been at the point of collision at the time it occurred, even though the decedent would not have been killed had he done his duty and gone back to warn the following train instead of remaining in the caboose, as he did. *Union Pac. R. Co. v. Hadley*, (1918) 246 U. S. 330, 38 S. Ct. 318, 62 U. S. (L. ed.) 751, *affirming* (1916) 99 Neb. 349, 156 N. W. 765.

d. Defects in Cars, Engines, Appliances, Etc.

(5) Particular Acts or Conditions as Negligence (p. 1282)

Defective ties, etc.—The failure of a railroad company to discover the condition of a tie, a piece of which, being rotten, splintered off under the weight of an employee who stepped upon it, causing him to stumble and fall, and its failure to ballast to the top of the tie, neither of which defects was of a character to impair safety in operation, will not render it liable under this Act for injuries sustained by such employee, who knew that there were always some ties on the line which were partly decayed, and that the ballast was occasionally below the top of the ties. *Nelson v. Southern R. Co.*, (1918) 246 U. S. 253, 38 S. Ct. 233, 62 U. S. (L. ed.) 690, *affirming* (1915) 170 N. C. 170, 86 S. E. 1036.

2. Persons Entitled to Sue

a. Parents (p. 1291)

Pecuniary loss to a mother will not support recovery by her where the son

left a widow and although they had lived apart, no claim was made that rights and liabilities consequent upon marriage had disappeared under the local law. *New Orleans, etc., R. Co. v. Harris*, (1918) 247 U. S. 367, 38 S. Ct. 535, 62 U. S. (L. ed.) 1167, *reversing* (Miss. 1916) 71 So. 913 mem.

4. Practice and Procedure

a. In General (p. 1306)

"Ordinary incidents of state procedure" are not excluded by this Act. *Dickinson v. Stiles*, (1918) 246 U. S. 631, 38 S. Ct. 415, 62 U. S. (L. ed.) 908, *affirming* (1917) 137 Minn. 410, 163 N. W. 791, and holding that a Minnesota statute giving an attorney a lien for his fees upon his client's cause of action which is not defeated by the latter's settlement of the case, may be applied to a cause of action arising under this Act.

6. Damages

a. Recovery by Employee (p. 1322)

Damages for pain and suffering are recoverable by the employee. *Atlantic Coast Line R. Co. v. Tomlinson*, (Ga. App. 1918) 94 S. E. 909.

Suffering in mind and body.—"No direct evidence of pain of mind was offered, but mental anguish is presumed to follow physical pain and injury such as plaintiff sustained." *Panhandle, etc., R. Co. v. Brooks*, (Tex. Civ. App. 1917) 199 S. W. 665, *affirming* judgment for plaintiff.

b. Actions for Death

(1) In General (p. 1323)

Excessiveness of verdict generally.—The court may require a remittitur from a verdict if it thinks the verdict excessive. *Union Pac. R. Co. v. Hadley*, (1918) 246 U. S. 330, 38 S. Ct. 318, 62 U. S. (L. ed.) 751, *affirming* (1916) 99 Neb. 349, 156 N. W. 765.

(2) Pecuniary Loss (p. 1325)

Where the deceased endured no conscious suffering, possible recovery is limited to pecuniary loss sustained by the designated beneficiary. *New Orleans, etc., R. Co. v. Harris*, (1918) 247 U. S. 367, 38 S. Ct. 535, 62 U. S. (L. ed.) 1167, *reversing* (Miss. 1916) 71 So. 913 mem.

c. Recovery by Widow and Children

(2) Actions by Widow (p. 1330)

Measure of damages generally.—An instruction, in substance, that the damages should be equivalent to compensation for the deprivation of the reasonable expectation of pecuniary benefits that would have resulted from the continued life of the deceased, was correct. *Louisville, etc., R. Co. v. Holloway*, (1918) 246 U. S. 525,

36 S. Ct. 379, 62 U. S. (L. ed.) 867, *affirming* (1916) 168 Ky. 262, 181 S. W. 1126.

7. Question for Court and Jury (p. 1334)

Negligence of carrier.—The question of negligence on the part of the carrier is one for the jury to determine. "Was the deceased carrier under such bridge without notice or knowledge of its latent dangers?" *Marland v. Philadelphia, etc., R. Co.*, (C. C. A. 3d Cir. 1917) 246 Fed. 91, 158 C. C. A. 317.

Defect in appliances.—Evidence tending to show that while the engineer of a backing switch engine which ran down another employee who was walking between the rails in a cloud of steam and smoke did not see the man struck, he was notified almost instantly by a call to stop from the one witness who saw the accident, and that, if the power brake had been working, the engineer could have stopped his engine almost immediately, but that in fact it ran for approximately 135 feet after striking the deceased, dragging and crushing his body between the frozen ballast of the track, the low hanging attachments of the tender, and the rods of the driving wheel brakes, with which the body was found so entangled as to require forty-five minutes to release it, is sufficient to justify the submission to the jury of the question whether a defective power brake on the engine contributed in whole or in part to the fatality, where the injuries causing death some fifteen hours after the accident are not described beyond the bare statement that the driving wheel rested on the wrist of deceased's right arm, that that arm was found afterward to be torn from the shoulder, and that his scalp was badly cut. *Union Pac. R. Co. v. Huxoll*, (1918) 245 U. S. 535, 38 S. Ct. 187, 62 U. S. (L. ed.) 455, *affirming* (1915) 99 Neb. 170, 155 N. W. 900.

Submitting case to jury.—The trial court was justified in submitting to the jury the general question of defendant's negligence if the defendant's conduct, viewed as a whole, warranted a finding of neglect, despite defendant's attempt to split up the charge of negligence into items mentioned in the declaration as constituent elements, and to secure a ruling as to each. *Union Pac. R. Co. v. Hadley*, (1918) 246 U. S. 330, 38 S. Ct. 318, 62 U. S. (L. ed.) 751, *affirming* (1916) 99 Neb. 349, 156 N. W. 765.

Vol. VIII, p. 1352, sec. 4.

I. IN GENERAL (p. 1352)

The statutory law of the state has no application, and the question of assumed risk is to be determined by the provisions of the Act itself and the common law, as recognized by the federal courts. *Pan-*

handle, etc., *R. Co. v. Brooks*, (Tex. Civ. App. 1917) 199 S. W. 665.

Violation of the Boiler Inspection Act of Feb. 17, 1911, ch. 103, § 2, vol. VIII, p. 1201, was "enacted for the safety of employees" within this section. *Great Northern R. Co. v. Donaldson*, (1918) 246 U. S. 121, 38 S. Ct. 230, 62 U. S. (L. ed.) 616, *affirming* (1916) 89 Wash. 161, 154 Pac. 133, holding that there was no error in refusing to give, in an action for death of an engineer, an instruction to the effect that if he was familiar with the type of construction used or the particular form of negligence involved, and knew the danger likely to arise therefrom, or, in the exercise of reasonable care, should have known of such things, he should be deemed to have assumed the risk.

II. PRINCIPLES GENERALLY AS TO ASSUMPTION OF RISK

4. Negligence of Employer (p. 1359)

Application of section.—"At common law the rule is well settled that a servant assumes extraordinary risks incident to his employment, or risks caused by the master's negligence which are obvious or fully known and appreciated by him;" and the risks which the employee still assumes in other cases, notwithstanding the elimination of the defense of assumed risk by this section, in any case, include those incident to the negligence of the carriers, officers, agents, or employees which are obvious or fully known to and appreciated by him. *Boldt v. Pennsylvania R. Co.*, (1918) 245 U. S. 441, 38 S. Ct. 139, 62 U. S. (L. ed.) 385, *affirming* (C. C. A. 2d Cir. 1914) 218 Fed. 367, 134 C. C. A. 175.

III. PARTICULAR EMPLOYEES (p. 1362)

Section hand.—In *Carnahan v. Chicago, etc., R. Co.*, (Neb. 1917) 165 N. W. 956, it was held that the evidence did not justify holding as matter of law that the plaintiff, a section hand, had assumed the risk of injury from a defective hand car, especially as he had complained of its unsafe condition to his foreman, who had promised speedily to replace it.

Vol. VIII, p. 1364, sec. 5.

II. APPLICABILITY OF SECTION GENERALLY (p. 1365)

A contract requiring notice of the injury as a condition precedent to recovery, even though valid at common law, is in-

valid as a defense to an action under this Act. *Panhandle, etc., R. Co. v. Brooks*, (Tex. Civ. App. 1917) 199 S. W. 665.

Vol. VIII, p. 1387, sec. 2.

V. EMPLOYEES WITHIN ACT (p. 1391)

Switch tenders.—In *Chicago, etc., R. Co. v. U. S.*, (1918) 247 U. S. 197, 38 S. Ct. 442, 62 U. S. (L. ed.) 1066, *affirming* (C. C. A. 7th Cir. 1917) 244 Fed. 945, 157 C. C. A. 295, a switch tender under the facts of the case was held to be within the nine-hour limit of the proviso.

VI. "ON DUTY" (p. 1396)

Continuity of service—Engine held for another train to arrive.—In determining whether engineers and firemen on certain extra freight engines called "pushers" were "continuously on duty" for more than sixteen hours, the question whether rest periods, when those employees were waiting for a train in the opposite direction, were to be regarded as breaking the continuity of their service "depended on whether, as a matter of fact, there was during those sixteen hours a substantial break, one that was substantial in amount and recuperative and restful in effect." The mere fact that they were subject to call during those periods was not decisive that the service was continuous. *Pennsylvania R. Co. v. U. S.*, (C. C. A. 3d Cir. 1917) 246 Fed. 881, 159 C. C. A. 153, where the court said: "The case is one of those border line and exceptional ones."

Vol. VIII, p. 1406, sec. 3.

IV. EMPLOYEES SUBJECT TO PROVISIO (p. 1407)

Telegraphers.—The proviso applies to all employees affected by the Acts and includes telegraphers. *U. S. v. Delano*, (C. C. A. 7th Cir. 1917) 246 Fed. 107, 158 C. C. A. 333.

V. EXCUSES FOR EXCESS OF SERVICE

3. "Casualty or Unavoidable Accident" (p. 1411)

Sudden illness.—Even if the sudden and unexpected illness of a telegraph operator were to be regarded as a "casualty," the railroad company was not excused where it failed to exercise a high degree of diligence after learning of such illness. *U. S. v. Delano*, (C. C. A. 7th Cir. 1917) 246 Fed. 107, 158 C. C. A. 333.

RIVERS, HARBORS AND CANALS

Vol. IX, p. 81, sec. 9.

Bridge over Chicago river authorized by state and Secretary of War held to be a

lawful structure. *Chicago Transp. Co. v. Pennsylvania Co.*, (N. D. Ill. 1917) 246 Fed. 190.

SEAMEN.

Vol. IX, p. 174, sec. 10.

Advances by foreign vessels in foreign ports are not covered by this section as amended, but only advances by foreign vessels in American ports. *The Belgier*, (S. D. N. Y. 1917) 246 Fed. 966.

Demanding half wages.—The Seamen's Act has abolished remedies for recapturing deserters. It does not, however, enable men to collect wages by making demands for half wages, which are part of a scheme to leave the ship. *The Belgier*, (S. D. N. Y. 1917) 246 Fed. 966.

Vol. IX, p. 180, sec. 20.

Construction.—Full effect must be given this section whenever the relationship between such parties becomes important. But the maritime law imposes upon a shipowner liability to a member of the crew injured at sea by reason of another

member's negligence, without regard to their relationship. The language of the section discloses no intention to impose upon shipowners the same measure of liability for injuries suffered by the crew while at sea as the common law prescribes for employers in respect of their employees on shore. *Chelentis v. Luckenbach Steamship Co.*, (1918) 247 U. S. 372, 38 S. Ct. 501, 62 U. S. (L. ed.) 1171, affirming (C. C. A. 2d Cir. 1917) 243 Fed. 536, 156 C. C. A. 234.

Vol. IX, p. 215, sec. 4596.

Failure of mate to report presence of alien stowaway to master is not an offense under this section where he had no knowledge of that fact till the vessel was several days at sea. *The Ellen Little*, (D. C. Mass. 1916) 246 Fed. 151.

SHIPPING AND NAVIGATION

Vol. IX, p. 343, sec. 14.

A tug with a tow of barges was held in fault for collision with a schooner, because the length of the hawsers upon which the barges were being towed at the time far exceeded that which was permitted by the department regulations es-

tablished under authority of this section. *The Piedmont*, (C. C. A. 1st Cir. 1917) 242 Fed. 385, 155 C. C. A. 161. To the same point in other collision cases see *The Triton*, (S. D. N. Y. 1917) 246 Fed. 318; *The Teaser*, (C. C. A. 3d Cir. 1917) 246 Fed. 219, 158 C. C. A. 379.

TIMBER LANDS AND FOREST RESERVES

Vol. IX, p. 588. [*Rights of settlers.*]

Title to the base lands does not pass to the United States until the deed is accepted by the General Land Office. *State v. Hyde*, (1918) 88 Ore. 1, 169 Pac. 757.

Vol. IX, p. 590, sec. 4.

"While such rules and regulations could not defeat the grant, they obviously could operate to execute and condition it." *Utah Power, etc., Co. v. U. S.*, (C. C. A. 8th Cir. 1915) 230 Fed. 328, 144 C. C. A. 470.

TRADE COMBINATIONS AND TRUSTS

Vol. IX, p. 644, sec. 1.

III. Construction of Act.

1. In general:

IV. Mode of determining question of violation.

7. General principles.

V. Application of Act.

2. Application in particular instances.

b. Articles protected by patent or trade-marks

f. Miscellaneous cases.

III. CONSTRUCTION OF ACT

1. In General (p. 647)

The disintegration aimed at by the statute does not extend to reducing all manufacture to isolated units of the lowest degree. *U. S. v. United Shoe Machinery Co.*, (1918) 247 U. S. 32, 38 S. Ct. 473, 62 U. S. (L. ed.) 968.

"Improvement of business and its efficiency can be striven for without offense to the law." *U. S. v. United Shoe Machinery Co.*, (1918) 247 U. S. 32, 38 S. Ct. 473, 62 U. S. (L. ed.) 968.

IV. MODE OF DETERMINING QUESTION OF VIOLATION

7. General Principles (p. 651)

"Merely because they leave open some branches of the business to the enterprise of others" is not proof that a combination does not violate the statute. *U. S. v. United Shoe Machinery Co.*, (1918) 247 U. S. 32, 38 S. Ct. 473, 62 U. S. (L. ed.) 968.

"The true test of legality is whether the restraint imposed is such as merely regulates and perhaps thereby promotes competition or whether it is such as may suppress or even destroy competition." *Board of Trade v. U. S.*, (1918) 246 U. S. 231, 38 S. Ct. 242, 62 U. S. (L. ed.) 683.

V. APPLICATION OF ACT

2. Application in Particular Instances

b. Articles Protected by Patents or Trade-marks (p. 661)

Patents.—"Where an article has been sold it passes beyond the monopoly given by the patent, and conditions cannot be imposed upon it. Leases are not of this character; they do not convey the title." *U. S. v. United Shoe Machinery Co.*, (1918) 247 U. S. 32, 38 S. Ct. 473, 62 U. S. (L. ed.) 968, holding that certain so-called "tying" clauses in leases by which the use of certain patented shoe-making machinery was granted by the corporate owner of the patents, did not offend against the Anti-Trust Act.

f. Miscellaneous Cases (p. 669)

Shoe-bottoming machinery.—A certain interchangeability in the patented shoe-bottoming machinery made by several corporations is not conclusive evidence of competition which would condemn the consolidation of such corporations into a single corporation organized for the purpose. *U. S. v. United Shoe Machinery Co.*, (1918) 247 U. S. 32, 38 S. Ct. 473, 62 U. S. (L. ed.) 968, holding that a consolidation of a number of corporations engaged in making noncompetitive patented shoe-bottoming machinery principally in use by shoe manufacturers in the kinds of work to which they are respectively adapted is not a combination in restraint of trade or commerce, condemned by the statute.

A purpose unlawfully to suppress competition cannot be imputed to a corporation formed by the consolidation of a number of corporations manufacturing noncompetitive patented shoe-bottoming machinery by reason of its subsequent acquisition of the plant and machinery of a shoe-manufacturing corporation, and of the shoe-machinery interest of the principal stockholder in the corporation, where the inducements of the purchase were to enable the use in one machine, without any patent infringement, of both the underlying invention owned by the consolidated company, and a patent owned by such principal stockholder for a particular and subordinate form of operation, and to compose patent infringement suits, both pending and prospective. *U. S. v. United Shoe Machinery Co.*, (1918) 247 U. S. 32, 38 S. Ct. 473, 62 U. S. (L. ed.) 968.

The Anti-Trust Act does not condemn a contract whereby a corporation formed by the consolidation of a number of corporations manufacturing noncompetitive patented shoe-bottoming machinery acquired the stock of another corporation making metallic fastening machines, merely by reason of a provision therein that the sellers should, for a limited term, assign to the purchaser any other inventions relating to shoe machinery which they should make. *U. S. v. United Shoe Machinery Co.*, (1918) 247 U. S. 32, 38 S. Ct. 473, 62 U. S. (L. ed.) 968.

Acquisitions by a corporation formed by the consolidation of a number of corporations manufacturing noncompetitive patented shoe-bottoming machinery, of other patents, property, and business, must be judged separately, not in accumulation, for the purpose of determining whether there has been a violation of the Anti-trust Act, where such acquisitions "were not coincident in time nor parts

of the same transaction, . . . were scattered through a period of years and varied each from the other, had no dependency, were different and unrelated steps in the development of the business of defendants." *U. S. v. United Shoe Machinery Co.*, (1918) 247 U. S. 32, 38 S. Ct. 473, 62 U. S. (L. ed.) 968.

Board of trade rule.—No unlawful restraint of commerce which may be enjoined as a violation of the Federal Anti-trust Law is imposed by a rule of the Chicago board of trade which prohibits its members from purchasing or offering to purchase, during the period between the close of its "Call" session and the opening of the session on the next business day, any grain "to arrive" at a price other than the closing bid at the Call. *Board of Trade v. U. S.*, (1918) 246 U. S. 231, 38 S. Ct. 242, 62 U. S. (L. ed.) 683.

Vol. IX, p. 701, sec. 4.

III. PLEADING AND EVIDENCE (p. 704)

In an answer filed in a suit to enjoin enforcement of a board of trade rule allegations concerning the history and purpose of the rule are relevant and should not be stricken out. *Board of Trade v. U. S.*, (1918) 246 U. S. 231, 38 S. Ct. 242, 62 U. S. (L. ed.) 683.

Evidence.—An avowal of monopoly, achieved or to be achieved, cannot reasonably be inferred from a circular which the directors of a corporation making pat-

ented shoe-bottoming machinery sent to its stockholders just after consolidation with several like corporations, setting forth that great advantages were to be secured by the control in one corporation of the most efficient types of shoe machinery, and that the directors and large stockholders had been in negotiation to accomplish that end, and that the new corporation would, from time to time, acquire other shoe-machinery properties either by direct ownership or by purchase of shares of their stock, or from a like declaration in a contract between the new corporation and its Australian agent, but such circular and agreement must be regarded as simply the business expression and foresight of the advantages which would result from the concentration in one management of instrumentalities which, however different, supplement one another in the creation of a shoe. *U. S. v. United Shoe Machinery Co.*, (1918) 247 U. S. 32, 38 S. Ct. 473, 62 U. S. (L. ed.) 968.

"The history of the restraint, the evil believed to exist, the reason for adopting the particular remedy, the purpose or end sought to be attained are all relevant facts. This not because a good intention will save an otherwise objectionable regulation or the reverse; but because knowledge of intent may help the court to interpret facts and to predict consequences." *Board of Trade v. U. S.*, (1918) 246 U. S. 231, 38 S. Ct. 242, 62 U. S. (L. ed.) 683.

WAR DEPARTMENT AND MILITARY ESTABLISHMENT

Vol. IX, p. 1136, sec. 1.

I. Construction of Selective Service Act.

1. Right to compel military service.
2. Persons subject to conscription.
3. Exemptions.
4. Determination of liability to conscription.
5. Offenses against conscription law.

I. CONSTRUCTION OF SELECTIVE SERVICE ACT

1. Right to Compel Military Service (p. 1139)

Constitutionality of Act.—The constitutionality of this Act was reaffirmed in *Ruthenberg v. U. S.*, (1917) 245 U. S. 480, 38 S. Ct. 168, 62 U. S. (L. ed.) 414. *Jones v. Perkins*, (1918) 245 U. S. 390, 38 S. Ct. 166, 62 U. S. (L. ed.) 358,

affirming (S. D. Ga. 1917) 242 Fed. 997; *Goldman v. U. S.*, (1918) 245 U. S. 474, 38 S. Ct. 166, 62 U. S. (L. ed.) 410; *Kramer v. U. S.*, (1918) 245 U. S. 478, 38 S. Ct. 168, 62 U. S. (L. ed.) 413; *Yanyar v. U. S.*, (1917) 246 U. S. 649, 38 S. Ct. 332, 62 U. S. (L. ed.) 920; *Breitmayer v. U. S.*, (C. C. A. 6th Cir. 1918) 249 Fed. 929.

2. Persons Subject to Conscription (p. 1140)

The phrase "liability to military service" in section 2 of this Act does not exclude from the operation of the Act citizens of Spain, as well as of other countries who have declared their intention to become citizens under the United States naturalization laws, even though the terms of an existing treaty exempt them. *Ex p. Larrucea*, (S. D. Cal. 1917) 249 Fed. 981.

3. Exemptions (p. 1141)

"Married man whose wife or child is dependent upon his labor for support," within the meaning of the regulations promulgated by the President under section 4 of this Act includes mental or physical labor and the dependent must be supported by such labor. *U. S. v. Miller*, (S. D. Fla. 1918) 249 Fed. 985.

4. Determination of Liability to Conscription (p. 1141)

Physical disability.—*The finding of a draft board as to physical disability is not subject to judicial review, even though the registrant alleges on habeas corpus that he was ordered to undergo an operation to relieve him from the hernia complained of and refused to submit to it. De Genaro v. Johnson*, (E. D. N. Y. 1918) 249 Fed. 504.

5. Offenses Against Conscription Law (p. 1142)

A conspiracy to violate this Act by means of preventing persons subject to registration from performing their duty to register is punishable as a conspiracy to defraud the United States within the meaning of PENAL LAWS, sec. 37 vol. VII, p. 534. *U. S. v. Galleanni*, (D. C. Mass. 1917) 245 Fed. 977.

Indictment.—An indictment charging in one count that the defendant, being subject to registration, made certain conveyances of property, and thereafter obtained exemption upon his affidavit that his wife was dependent upon him for support, and that he thereby evaded the requirements of the Act, and another count charging that said affidavit constituted a false statement and certificate as to his fitness and liability for military service—was held sufficient as to both counts. *U. S. v. Miller*, (S. D. Fla. 1918) 249 Fed. 985.

Selling intoxicating liquor to soldier in uniform.—An indictment for such violation of section 12 of this Act need not negative what the court termed the "exceptions in nubibus" in the clause "except as herein provided." *Young v. U. S.*, (C. C. A. 6th Cir. 1918) 249 Fed. 935, affirming a judgment of conviction.

Evidence.—In *Breitmayer v. U. S.*, (C. C. A. 6th Cir. 1918) 249 Fed. 929, a conviction for violating section 5 of this Act by refusing to present himself for or submit to registration was affirmed upon evidence held sufficient to prove the corpus delicti in respect of the elements of age and failure to register, and that defendant was not a member of the National Guard in the service of the United States.

Vol. IX, p. 1156, sec. 2.

See notes to section 1 of this Act, *supra*, p. 1181.

Vol. IX, p. 1157, sec. 4.

Regulations promulgated by the President under this section have the force of law and the courts take judicial cognizance of them. *U. S. v. Miller*, (S. D. Fla. 1918) 249 Fed. 985.

Vol. IX, p. 1162, sec. 12.

See notes to section 1 of this Act, *supra*, p. 1181.

Vol. IX, p. 1192, sec. 1262.

A contract surgeon is not an officer entitled to have his service as such contract surgeon counted in the computation of his longevity pay. *Yemans v. U. S.*, (1917) 52 Ct. Cl. 388.

Vol. IX, p. 1254, art. 2.

"Persons accompanying or serving with the armies," the phrase in clause "(d)" was held to apply to a person on an army transport who volunteered to stand watch, and for several days did so, and finally refused to continue. *Ex p. Gerlach*, (S. D. N. Y. 1917) 247 Fed. 616.

Vol. IX, p. 1343, sec. 120.

Compliance with government orders excuses a manufacturer from performing a contract with another party to supply the same goods to the latter, where such compliance renders performance of the contract impossible. *Moore v. Roxford Knitting Co.*, (S. D. N. Y. 1918) 250 Fed. 278, holding that under the facts of the case, the government did "place an order" within the meaning of this section.

WITNESSES

Vol. IX, p. 1421, sec. 858.

III. CRIMINAL CASES (p. 1422)

A previous conviction of forgery does not disqualify the person convicted from testifying on behalf of the government in

a criminal trial in a federal court. *Rosen v. U. S.*, (1918) 245 U. S. 467, 38 S. Ct. 148, 62 U. S. (L. ed.) 406, following *Benson v. U. S.*, (1892) 146 U. S. 325, 13 S. Ct. 60, 38 U. S. (L. ed.) 991 rather than *U. S. v. Reid*, (1851) 12 How. 361, 13 U. S. L. ed.) 1023.

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